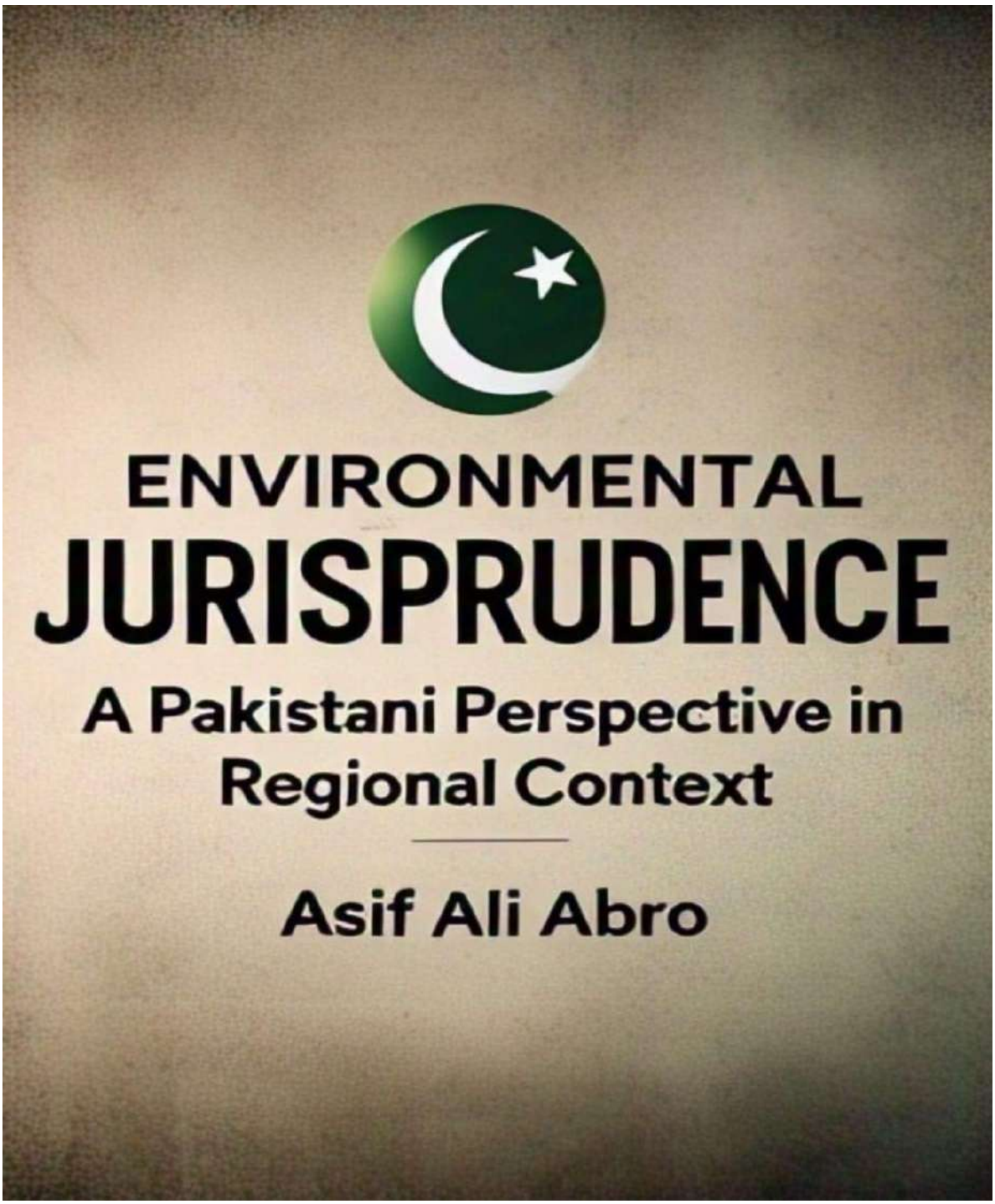
ENVIRONMENTAL
JURISPRUDENCE
A Pakistani Perspective in Regional Context
Asif Ali Abro

FOREWORD:

ENVIRONMENTAL JURISPRUDENCE

A Pakistani Perspective in Regional Context

According to the Global Climate Risk Index Pakistan ranked at number 7th in (2017) and 5th in (2024), in list of countries which are most vulnerable to climate change. It transpires that Pakistan is more vulnerable to disastrous effects of climate change. The devastating floods/heavy rains of 2022 in Sindh Province of Pakistan which brought catastrophic consequences, starkly illustrate this vulnerability.

The writer/complier has passion for climate laws as he himself is an eyewitness and affected member of community which has witnessed the disastrous effects of climate change as writer's own ancestral home and homes of his community were severely damaged and destroyed in Sindh Province of Pakistan due to heavy rains/floods of 2022 which were caused by climate change due to warming of atmosphere owing to unregulated human activities. The writer has also remained a member of prestigious Civil Service of Pakistan and has served at various

key positions such as Ex-Deputy Commissioner-IR in Karachi before embarking on this legal journey.

Pakistan's legal framework has evolved over the period of time and certain judicial milestones have been achieved in shape of landmark judgements given by various legal institutions but still there is long distance to be covered. In this regard, Pakistan also hosted a panel discussion on the topic of "Judicial Pathways Towards Climate Justice: Judicial Approaches for Addressing Climate Change Through Global Analysis' at the Pakistan Pavilion on the sidelines of the UN-led Global Climate Summit (COP 29) held in November 2024 at Baku,Azerbaijan. During these discussions, the role of Pakistan in development of Environmental Law was appreciated by international judicial leaders.

This book is a pioneering legal research initiative/effort on probobno basis with the aim of promoting environmental justice through the enforcement & awareness of international and national environmental laws across various jurisdictions.

Effective environmental justice relies on the coordination and knowledge-sharing among organizations, individuals, and

stakeholders. To this end, a comprehensive book of legal decisions and enactments related to environmental law has been compiled with spirit of sharing environmental legal knowledge, with the goal of empowering individuals and organizations across jurisdictions to advocate for the strict implementation of environmental laws which is cornerstone of climate resilience.

This book has three parts. The first part deals with major environmental enactments of Pakistan. The second part deals with judicial decisions of Pakistan relating to environment/climate change. The third part of the book narrates certain case law summaries of climate related-environmental decisions from other jurisdictions/organizations of the world.

This book will be a toolkit/reference/scale in hands many stakeholders which could be used for enforcement, awareness and advocacy of environmental rights, vigorous administration of justice, effective environmental governance and capacity building of jurists, administrators and activists and for measuring the efficacy of any climate change related policy and other allied matters and in last but not least for the further development of environmental jurisprudence.

This book is minor effort in compilation of environmental related decisions with bonafide intention of dissemination of the knowledge and suggestions and comments for improvements will be warmly welcomed by the author.

In the last, I would like to acknowledge the efforts and support rendered during this work by Professor Dr.Ameer Ali Abro from Institute of Research & Integrated Sustainability-Pakistan (IRIS) and the valuable motivation and assistance provided to me by my family members i.e. Saqib Ali Abro(Son), Aqib Ali Abro(Son),Aarib Ali Abro(Son) ,Masooma Abro(Daughter), Ahmed Ali Abro (Brother) and Muhammad Ali Abro (Brother).

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Part-I Major Environmental Enactments of Pakistan

Pakistan Environmental Protection Act 1997

ACT No. (XXXIV of 1997)

549

REGISTERED No. M-302 L.-7646

The Gazette of Pakistan

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ISLAMABAD, SATURDAY, DECEMBER 6, 1997

PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 6th December, 1997

No. F. 9(46)/97-Legis.—The following Acts of Majlis-e-Shoora (Parliament) received the assent of the Acting President on the 3rd December, 1997, are hereby published for general information :—

ACT NO. XXXIV OF 1997

An Act to provide for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development

WHEREAS it it expedient to provide for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution, promotion of sustainable development, and for matters connected therewith and incidental thereto;

It is hereby enacted as follows :

1. **Short title, extent and commencement.**—(1) This Act may be called the Pakistan Environmental Protection Act, 1997.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

(i) "adverse environmental effect" means impairment of, or damage to, the environment and includes—

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(a) impairment of, or damage to, human health and safety or to biodiversity or property ;

(b) pollution ; and

(c) any adverse environmental effect as may be specified in the regulations ;

(ii) "agricultural waste" means waste from farm and agricultural activities including poultry, cattle farming, animal husbandry, residues from the use of fertilizers, pesticides and other farm chemicals ;

(iii) "air pollutant" means any substance that causes pollution of air and includes soot, smoke, dust particles, odor, light, electro-magnetic, radiation, heat, fumes, combustion exhaust, exhaust gases, noxious gases, hazardous substances and radioactive substances ;

(iv) "biodiversity" or "biological diversity" means the variability among living organisms from all sources, including *inter alia* terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part ; this includes diversity within species, between species and of ecosystems ;

(v) "Council" means the Pakistan Environmental Protection Council established under section 3 ;

(vi) "discharge" means spilling, leaking, pumping, depositing, seeping, releasing, flowing out, pouring, emitting, emptying or dumping ;

(vii) "ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit ;

(viii) "effluent" means any material in solid, liquid or gaseous form or combination thereof being discharged from industrial activity or any other source and includes a slurry, suspension or vapour ;

(ix) "emission standards" means the permissible standards established by the Federal Agency or a Provincial Agency for emission of air pollutants and noise and for discharge of effluents and waste ;

(x) "environment" means—

(a) air, water and land ;

(b) all layers of the atmosphere ;

(c) all organic and inorganic matter and living organisms ;

(d) the ecosystem and ecological relationships ;

(e) buildings, structures, roads, facilities and works ;

(f) all social and economic conditions affecting community life ; and

(g) the inter-relationships between any of the factors in sub-clauses (a) to (f) ;

(xi) "environmental impact assessment" means an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed ;

(xii) "Environmental Magistrate" means the Magistrate of the First Class appointed under section 24 ;

(xiii) "Environmental Tribunal" means the Environmental Tribunal constituted under section 20 ;

(xiv) "Exclusive Economic Zone" shall have the same meaning as defined in the Territorial Waters and Maritime Zones Act, 1976 (LXXXII of 1976) ;

(xv) "factory" means any premises in which industrial activity is being undertaken ;

(xvi) "Federal Agency" means the Pakistan Environmental Protection Agency established under section 5, or any Government Agency, local council or local authority exercising the powers and functions of the Federal Agency;

(xvii) "Government Agency" includes—

(a) a division, department, attached department, bureau, section, commission, board, office or unit of the Federal Government or a Provincial Government ;

(b) a developmental or a local authority, company or corporation established or controlled by the Federal Government or Provincial Government ;

(c) a Provincial Environmental Protection Agency ; and

(d) any other body defined and listed in the Rules of Business of the Federal Government or a Provincial Government.

(xviii) "hazardous substance" means—

(a) a substance or mixture of substances, other than a pesticide as defined in the Agricultural Pesticides Ordinance, 1971 (II of 1971), which, by reason of its chemical activity or toxic, explosive, flammable, corrosive, radioactive or other characteristics causes, or is likely to cause, directly or in combination with other matters, an adverse environmental effect ; and

(b) any substance which may be prescribed as a hazardous substance ;

(xix) "hazardous waste" means waste which is or which contains a hazardous substance or which may be prescribed as hazardous waste, and includes hospital waste and nuclear waste ;

(xx) "historic waters" means such limits of the waters adjacent to the land territory of Pakistan as may be specified by notification under section 7 of the Territorial Waters and Maritime Zones Act, 1976 (LXXXII of 1976) ;

(xxi) "hospital waste" includes waste medical supplies and materials of all kinds, and waste blood, tissue, organs and other parts of the human and animal bodies, from hospitals, clinics and laboratories ;

(xxii) "industrial activity" means any operation or process for manufacturing, making, formulating, synthesising, altering, repairing, ornamenting, finishing, packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or for mining, for oil and gas exploration and development, or for pumping water or sewage, or for generating, transforming or transmitting power or for any other industrial or commercial purposes ;

(xxiii) "industrial waste" means waste resulting from an industrial activity ;

(xxiv) "initial environmental examination" means a preliminary environmental review of the reasonably foreseeable qualitative and quantitative impacts on the environment of a proposed project to determine whether it is likely to cause an adverse environmental effect for requiring preparation of an environmental impact assessment ;

(xxv) "local authority" means any agency set-up or designated by the Federal Government or a Provincial Government by notification in the official Gazette to be a local authority for the purposes of this Act ;

(xxvii) "motor vehicle" means any mechanically propelled vehicle adapted for use upon land whether its power of propulsion is transmitted thereto from an external or internal source, and includes a chassis to which a body has not been attached, and a trailer, but does not include a vehicle running upon fixed rails ;

(xxviii) "municipal waste" includes sewage, refuse, garbage, waste from abattoirs, sludge and human excreta and the like ;

(xxix) "National Environmental Quality Standards" means standards established by the Federal Agency under clause (e) of sub-section (1) of section 6 and approved by the Council under clause (c) of sub-section (1) of section 4 ;

(xxx) "noise" means the intensity, duration and character of sounds from all sources, and includes vibration ;

(xxxi) "nuclear waste" means waste from any nuclear reactor or nuclear plant or other nuclear energy system, whether or not such waste is radioactive ;

(xxxii) "person" means any natural person or legal entity and includes an individual, firm, association, partnership, society, group, company, corporation, co-operative society, Government Agency, non-governmental organization, community-based organization, village organization, local council or local authority and, in the case of a vessel, the master or other person having for the time being the charge or control of the vessel ;

(xxxiii) "pollution" means the contamination of air, land or water by the discharge or emission of effluents or wastes or air pollutants or noise or other matter which either directly or indirectly or in combination with other discharges or substances alters unfavourably the chemical, physical, biological, radiational, thermal or radiological or aesthetic properties of the air, land or water or which may, or is likely to make the air, land or water unclean, noxious or impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to biodiversity ;

(xxxiv) "prescribed" means prescribed by rules made under this Act ;

(xxxv) "project" means any activity, plan, scheme, proposal or undertaking involving any change in the environment and includes—

(a) construction or use of buildings or other works ;

(b) construction or use of roads or other transport systems ;

(c) construction or operation of factories or other installations ;

(d) mineral prospecting, mining, quarrying, stone-crushing, drilling and the like ;

(e) any change of land use or water use ; and

(f) alteration, expansion, repair, decommissioning or abandonment of existing buildings or other works, roads or other transport systems, factories or other installations ;

(xxxvi) "proponent" means the person who proposes or intends to undertake a project ;

(xxxvii) "Provincial Agency" means a Provincial Environmental Protection Agency established under section 8 ;

(xxxviii) "regulations" means regulations made under this Act ;

(xxxix) "rules" means rules made under this Act ;

(xl) "sewage" means liquid or semi-solid wastes and sludge from sanitary conveniences, kitchens, laundries, washing and similar activities and from any sewerage system or sewage disposal works ;

(xli) "standards" means qualitative and quantitative standards for discharge of effluents and wastes and for emission of air pollutants and noise either for general applicability or for a particular area, or from a particular production process, or for a particular product, and includes the National Environmental Quality Standards, emission standards and other standards established under this Act and the rules and regulations made thereunder ;

(xlii) "sustainable development" means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs ;

(xliii) "territorial waters" shall have the same meaning as defined in the Territorial Waters and Maritime Zones Act, 1976 (LXXXII of 1976) ;

(xliv) "vessel" includes anything made for the conveyance by water of human beings or of goods ; and

(xlv) "waste" means any substance or object which has been, is being or is intended to be, discarded or disposed of, and includes liquid waste, solid waste, waste gases, suspended waste, industrial waste, agricultural waste, nuclear waste, municipal waste, hospital waste, used polyethylene bags and residues from the incineration of all types of waste.

3. **Establishment of the Pakistan Environmental Protection Council.**— (1) The Federal Government shall, by notification in the official Gazette, establish a Council to be known as the Pakistan Environmental Protection Council consisting of—

(i)	Prime Minister or such other person as the Prime Minister may nominate in this behalf.	*Chairperson*
(ii)	Minister Incharge of the Ministry or Division dealing with the subject of environment.	*Vice-Chairperson*
(iii)	Chief Ministers of the Provinces.	*Members*
(iv)	Ministers Incharge of the subject of environment in the Provinces.	*Members*
(v)	Such other persons not exceeding thirty-five as the Federal Government may appoint, of which at least twenty shall be non-official including five representatives of the Chambers of Commerce and Industry and industrial associations and one or more representatives of the Chambers of Agriculture, the medical and legal professions, trade unions, and non-governmental organizations concerned with the environment and development, and scientists, technical experts and educationists.	*Members*
(vi)	Secretary to the Government of Pakistan, in-charge of the Ministry or Division dealing with the subject of environment.	*Member/ Secretary.*

(2) The Members of the Council, other than *ex-officio* members, shall be appointed in accordance with the prescribed procedure and shall hold office for a term of three years.

(3) The Council shall frame its own rules of procedure.

(4) The Council shall hold meetings as and when necessary, but not less than two meetings shall be held in a year.

(5) The Council may constitute committees of its members and entrust them with such functions at it may deem fit, and the recommendations of the committees shall be submitted to the Council for approval.

(6) The Council or any of its committees may invite any technical expert or representative of any Government Agency or non-governmental organization or other person possessing specialized knowledge of any subject for assistance in performance of its

4. **Functions and powers of the Council.**—(1) The Council shall—

(a) co-ordinate and supervise enforcement of the provisions of this Act;

(b) approve comprehensive national environmental policies and ensure their implementation within the framework of a national conservation strategy as may be approved by the Federal Government from time to time ;

(c) approve the National Environmental Quality Standards ;

(d) provide guidelines for the protection and conservation of species, habitats, and biodiversity in general, and for the conservation of renewable and non-renewable resources ;

(e) coordinate integration of the principles and concerns of sustainable development into national development plans and policies ; and

(f) consider the National Environment Report and give appropriate directions thereon.

(2) The Council may, either itself or on the request of any person or organisation, direct the Federal Agency or any Government Agency to prepare, submit, promote or implement projects for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, and the sustainable development of resources, or to undertake research in any specified aspect of environment.

5. **Establishment of the Pakistan Environmental Protection Agency .—** (1) The Federal Government shall, by notification in the official Gazette, establish the Pakistan Environmental Protection Agency, to exercise the powers and perform the functions assigned to it under the provisions of this Act and the rules and regulations made thereunder.

(2) The Federal Agency shall be headed by a Director-General, who shall be appointed by the Federal Government on such terms and conditions as it may determine.

(3) The Federal Agency shall have such administrative, technical and legal staff as the Federal Government may specify, to be appointed in accordance with such procedure as may be prescribed.

(4) The powers and functions of the Federal Agency shall be exercised and performed by the Director-General.

(5) The Director-General may, be general or special order, delegate any of these powers and functions to staff appointed under sub-section (3).

(6) For assisting the Federal Agency in the discharge of its functions, the

as members thereof eminent representatives of the relevant sector, educational institutions, research institutes and non-governmental organizations.

6. **Functions of the Federal Agency.**—(1) The Federal Agency shall—

(a) administer and implement the provisions of this Act and the rules and regulations made thereunder ;

(b) prepare, in coordination with the appropriate Government Agency and in consultation with the concerned sectoral Advisory Committees, national environmental policies for approval by the Council ;

(c) take all necessary measures for the implementation of the national environmental policies approved by the Council ;

(d) prepare and publish an annual National Environment Report on the state of the environment ;

(e) prepare or revise, and establish the National Environmental Quality Standards with approval of the Council :

Provided that before seeking approval of the Council, the Federal Agency shall publish the proposed National Environmental Quality Standards for public opinion in accordance with the prescribed procedure ; and

(f) ensure enforcement of the National Environmental Quality Standards ;

(g) establish standards for the quality of the ambient air, water and land, by notification in the official Gazette, in consultation with the Provincial Agency concerned :

Provided that

(i) different standards for discharge or emission from different source and for different areas and conditions may be specified ;

(ii) where standards are less stringent than the National Environmental Quality Standards prior approval of the Council shall be obtained ;

(iii) certain areas, with the approval of the Council, may exclude from carrying out specific activities, projects from the application of such standards ;

(h) co-ordinate environmental policies and programmes nationally and internationally ;

(i) establish systems and procedures for surveys, surveillance, monitoring, measurement, examination, investigation, research, inspection and audit to prevent and control pollution, and to estimate the costs of cleaning up pollution and rehabilitating the environment in various sectors ;

(j) take measures to promote research and the development of science and technology which may contribute to the prevention of pollution, protection of the environment, and sustainable development ;

(k) certify one or more laboratories as approved laboratories for conducting tests and analysis and one or more research institutes as environmental research institutes for conducting research and investigation, for the purposes of this Act ;

(l) identify the needs for, an initiate legislation in various sectors of the environment ;

(m) render advice and assistance in environmental matters, including such information and data available with it as may be required for carrying out the purposes of this Act :

Provided that the disclosure of such information shall be subject to the restrictions contained in the proviso to sub-section (3) of section 12 ;

(n) assist the local councils, local authorities, Government Agencies and other persons to implement schemes for the proper disposal of wastes so as to ensure compliance with the standards established by it ;

(o) provide information and guidance to the public on environmental matters ;

(p) recommend environmental courses, topics, literature and books for incorporation in the curricula and syllabi of educational institutions ;

(q) promote public education and awareness of environmental issues through mass media and other means, including seminars and workshops ;

(r) specify safeguards for the prevention of accidents and disasters which may cause pollution, collaborate with the concerned person in the preparation of contingency plans for control of such accidents and disasters, and co-ordinate implementation of such plans ;

(s) encourage the formation and working of non-governmental organizations, community organizations and village organizations to prevent and control pollution and promote sustainable development ;

(t) take or cause to be taken all necessary measures for the protection, conservation, rehabilitation and improvement of the environment, prevention

(u) perform any function which the Council may assign to it.

(2) The Federal Agency may—

(a) undertake inquiries or investigation into environmental issues, either of its own accord or upon complaint from any person or organisation ;

(b) request any person to furnish any information or data relevant to its functions ;

(c) initiate with the approval of the Federal Government, requests for foreign assistance in support of the purposes of this Act and enter into arrangements with foreign agencies or organizations for the exchange of material or information and participate in international seminars or meetings ;

(d) recommend to the Federal Government the adoption of financial and fiscal programmes, schemes or measures for achieving environmental objectives and goals and the purposes of this Act, including—

(i) incentives, prizes awards, subsidies, tax exemptions, rebates and depreciation allowances ; and

(ii) taxes, duties, cesses and other levies ;

(e) establish and maintain laboratories to help in the performance of its functions under this Act and to conduct research in various aspects of the environment and provide or arrange necessary assistance for establishment of similar laboratories in the private sector ; and

(f) provide or arrange, in accordance with such procedure as may be prescribed, financial assistance for projects designed to facilitate the discharge of its functions.

7. **Powers of the Federal Agency.**—Subject to the provisions of this Act, the Federal Agency may—

(a) lease, purchase, acquire, own, hold, improve, use or otherwise deal in and with any property both movable and immovable ;

(b) sell, convey, mortgage, pledge, exchange or otherwise dispose of its property and assets ;

(c) fix and realize fees, rates and charges for rendering any service or providing any facility information or data under this Act or the rules and regulations made thereunder ;

(e) appoint with the approval of the Federal Government and in accordance with such procedures as may be prescribed, such advisers, experts and consultants as it considers necessary for the efficient performance of its functions on such terms and conditions as it may deem fit ;

(f) summon and enforce the attendance of any person and require him to supply any information or document needed for the conduct of any enquiry or investigation into any environmental issue ;

(g) enter and inspect and under the authority of a search warrant issued by the Environmental Tribunal or Environmental Magistrate, search at any reasonable time, any land, building, premises, vehicle or vessel or other place where or in which, there are reasonable grounds to believe that an offence under this Act has been or is being committed ;

(h) take samples of any materials, products, articles or substances or of the effluents, wastes or air pollutants being discharged or emitted or of air, water or land in the vicinity of the discharge or emission ;

(i) arrange for test and analysis of the samples at a certified laboratory ;

(j) confiscate any article used in the commission of the offence where the offender is not known or cannot be found within a reasonable time :

Provided that the power under clauses (f), (h), (i) and (j) shall be exercised in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or the rules made under this Act and under the direction of the Environmental Tribunal or Environmental Magistrate ; and

(h) establish a National Environmental Coordination Committee comprising the Director-General as its chairman and the Director-Generals of the Provincial Environmental Protection Agencies and such other persons as the Federal Government may appoint as its members to exercise such powers and perform such functions as may be delegated or assigned to it by the Federal Government for carrying out the purposes of this Act and for ensuring inter provincial co-ordination in environmental policies.

8. **Establishment, powers and functions of the Provincial Environmental Protection Agencies.**—(1) Every Provincial Government shall, by notification in the official Gazette, establish an Environmental Protection Agency, to exercise such powers and perform such functions as may be delegated to it by the Provincial Government under subsection (2) of section 26.

(2) The Provincial Agency shall be headed by a Director-General who shall be appointed by the Provincial Government on such terms and conditions as it may determine.

(3) The Provincial Agency shall have such administrative, technical and legal

(4) The powers and functions of the Provincial Agency shall be exercised and performed by the Director-General.

(5) The Director-General may, by general or special order, delegate any of these powers and functions to staff appointed under sub-section (3).

(6) For assistance of the Provincial Agency in the discharge of its functions, the Provincial Government shall establish sectoral Advisory Committees for various sectors and appoint members from amongst eminent representatives of the relevant sector, educational institutions, research institutes and non-governmental organizations.

9. **Establishment of the Provincial Sustainable Development Funds.**—(1) There shall be established in each Province a Sustainable Development Fund.

(2) The Provincial Sustainable Development Fund shall be derived from the following sources, namely :—

(a) grants made or loans advanced by the Federal Government or the Provincial Governments ;

(b) aid and assistance, grants, advances, donations and other non-obligatory funds received from foreign governments, national or international agencies, and non-governmental organizations ; and

(c) contributions from private organizations, and other persons.

(3) The Provincial Sustainable Development Fund shall be utilized in accordance with such procedure as may be prescribed for—

(a) providing financial assistance to the projects designed for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, the sustainable development of resources and for research in any specified aspect of environment ; and

(b) any other purpose which in the opinion of the Board will help achieve environmental objectives and the purposes of this Act.

10. **Management of the Provincial Sustainable Development Fund.**—(1)

(iii)	such non-official persons not exceeding ten as the Provincial Government may appoint including representatives of the Provincial Chamber of Commerce and Industry, non-governmental organizations, and major donors.	*Members*
(iv)	Director-General of the Provincial Agency.	*Member/ Secretary.*

(2) In accordance with such procedure and such criteria as may be prescribed, the Board shall have the power to—

(a) sanction financial assistance for eligible projects ;

(b) invest moneys held in the Provincial Sustainable Development Fund in such profit-bearing Government bonds, savings schemes and securities as it may deem suitable ; and

(c) take such measures and exercise such powers as may be necessary for utilization of the Provincial Sustainable Development Fund for the purposes specified in sub-section (3) of section 9.

(3) The Board shall constitute committees of its members to undertake regular monitoring of projects financed from the Provincial Sustainable Development Fund and to submit progress reports to the Board which shall publish an Annual Report incorporating its annual audited accounts, and performance evaluation based on the progress reports.

11. **Prohibition of certain discharges or emissions.**—(1) Subject to the provisions of this Act and the rules and regulations made thereunder no person shall discharge or emit or allow the discharge or emission of any effluent or waste or air pollutant or noise in an amount, concentration or level which is in excess of the National Environmental Quality Standards or, where applicable, the standards established under sub-clause (i) of clause (g) of sub-section (1) of section 6.

(2) The Federal Government levy a pollution charge on any person who contravenes or fails to comply with the provisions of sub-section (1), to be calculated at such rate, and collected in accordance with such procedure as may be prescribed.

(3) Any person who pays the pollution charge levied under sub-section (2) shall not be charged with an offence with respect to that contravention or failure.

(4) The provisions of sub-section (3) shall not apply to any which

(2) The Federal Agency shall—

(a) review the initial environmental examination and accord its approval, or require submission of an environmental impact assessment by the proponent ; or

(b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, or require that the environmental impact assessment be re-submitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to—

(i) trade, manufacturing or business activities, processes or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reasons to be recorded in writing, the Director-General of the Federal Agency is of the opinion that the request for confidentiality is not well-founded or the public interest in the disclosure outweighs the possible prejudice to the competitive position of the project or its proponent ; or

(ii) international relations, national security or maintenance of law and order, except with the consent of the Federal Government ; or

(iii) matters covered by legal professional privilege.

(4) The Federal Agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules and regulations made thereunder.

(5) Subject to sub-section (4) the Federal Government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.

(6) The provisions of sub-sections (1), (2), (3), (4) and (5) shall apply to such

13. **Prohibition of import of hazardous waste.**—No person shall import hazardous waste into Pakistan and its territorial waters, Exclusive Economic Zone and historic waters.

14. **Handling of hazardous substances.**—Subject to the provisions of this Act, no person shall generate, collect, consign, transport, treat, dispose of, store, handle or import any hazardous substance except—

(a) under a licence issued by the Federal Agency and in such manner as may be prescribed ; or

(b) in accordance with the provisions of any other law for the time being in force, or of any international treaty, convention, protocol, code, standard, agreement or other instrument to which Pakistan is a party.

15. **Regulation of motor vehicles.**—(1) Subject to the provisions of this Act and the rules and regulations made thereunder, no person shall operate a motor vehicle from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the National Environmental Quality Standards, or where applicable the standards established under clause (g) of sub-section (1) of section 6.

(2) For ensuring compliance with the standards mentioned in sub-section (1), the Federal Agency may direct that any motor vehicle or class of vehicles shall install such pollution control devices or other equipment or use such fuels or undergo such maintenance or testing as may be prescribed.

(3) Where a direction has been issued by the Federal Agency under sub-section (2) in respect of any motor vehicles or class of motor vehicles, no person shall operate any such vehicle till such direction has been complied with.

16. **Environmental protection order.**—(1) Where the Federal Agency or a Provincial Agency is satisfied that the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substances, or any other act or omission is likely to occur, or is occurring or has occurred in violation of the provisions of this Act, rules or regulations or of the conditions of a licence, and is likely to cause, or is causing or has caused an adverse environmental effect, the Federal Agency or, as the case may be, the Provincial Agency may, after giving the person responsible for such discharge emission, disposal, handling, act or omission an opportunity of being heard, by order direct such person to take such measures that the Federal Agency or Provincial Agency may consider necessary within such period as may be specified in the order.

(2) In particular and without prejudice to the generality of the foregoing

(b) installation, replacement or alteration of any equipment or thing to eliminate or control or abate on a permanent or temporary basis, such discharge, emission, disposal, handling, act or omission ;

(c) action to remove or otherwise dispose of the effluent, waste, air pollutant, noise, or hazardous substances ; and

(d) action to restore the environment to the condition existing prior to such discharge, disposal, handling, act or omission, or as close to such condition as may be reasonable in the circumstances, to the satisfaction of the Federal Agency or, Provincial Agency.

(3) Where the person, to whom directions under sub-section (1) are given, does not comply therewith, the Federal Agency or Provincial Agency may, in addition to the proceeding initiated against him under this Act or the rules and regulations, itself take or cause to be taken such measures specified in the order as it may deems necessary, and may recover the costs of taking such measures from such person as arrears of land revenue.

17. **Penalties.**—(1) Whoever contravenes or fails to comply with the provisions of sections 11, 12, 13, or section 16 or any order issued thereunder shall be punishable with fine which may extend to one million rupees, and in the case of a continuing contravention or failure, with an additional fine which may extend to one hundred thousand rupees for every day during which such contravention or failure continues and where such contravention or failure continues :

Provided that if contravention of the provisions of section 11 also constitutes contravention of the provisions of section 15, such contravention shall be punishable under sub-section (2) only.

(2) Whoever contravenes or fails to comply with the provisions of section 14 or 15 or any rule or regulation or conditions of any licence, any order or direction issued by the Council or by the Federal Agency or Provincial Agency shall be punishable with fine which may extend to one hundred thousand rupees, and in case of continuing contravention, or failure with an additional fine which extend to one thousand rupees for every day during which such contravention continues.

(3) Where an accused has been convicted of an offence under sub-section (1) and (2), the Environmental Tribunal and Environmental Magistrate shall, in passing sentence, take into account the extent and duration of the contravention or failure constituting the offence, and the attendant circumstances.

(4) Where an accused has been convicted of an offence under sub-section (1)

(5) Where a person convicted under sub-section (1) or sub-section (2) ; and had been previously convicted for any contravention under this Act, the Environmental Tribunal or, as the case may be, Environmental Magistrate may, in addition to the punishment awarded thereunder—

(a) endorse a copy of the order of conviction to the concerned trade or industrial association, if any, or the concerned Provincial Chamber of Commerce and Industry or the Federation of Pakistan Chambers of Commerce and Industry ;

(b) sentence him to imprisonment for a term which may extend up to two years;

(c) order the closure of the factory ;

(d) order confiscation of the factory, machinery, and equipment, vehicle, material or substance, record or document or other object used or involved in contravention of the provisions of the Act :

Provided that for a period of three years from the date of commencement of this Act, the sentence of imprisonment shall be passed only in respect of persons who have been previously convicted for more than once for any contravention of sections 11, 13, 14 or 16 involving hazardous waste ;

(e) order such person to restore the environment at his own cost, to the conditions existing prior to such contravention or as close to such conditions as may be reasonable in the circumstances to the satisfaction of the Federal Agency or, as the case may be, Provincial Agency ; and

(f) order that such sum be paid to any person as compensation for any loss, bodily injury, damage to his health or property suffered by such contravention.

(6) The Director-General of the Federal Agency or of a Provincial Agency or an officer generally or specially authorised by him in this behalf may, on the application of the accused compound an offence under this Act with the permission of the Environmental Tribunal or Environmental Magistrate in accordance with such procedure as may be prescribed.

(7) Where the Director-General of the Federal Agency or of a Provincial Agency is of the opinion that a person has contravened any provision of this Act, he may, subject to the rules, by notice in writing to that person require him to pay to the Federal

(8) The provisions of sub-sections (6) and (7) shall not apply to a person who has been previously convicted of offence or who has compounded an offence under this Act or who has paid an administrative penalty for a contravention of any provision of this Act.

18. **Offences by bodies corporate.**—Where any contravention of this Act has been committed by a body corporate, and it is proved that such offence has been committed with the consent or connivance or, or is attributed to any negligence on the part of, any director, partner, manager, secretary or other officer of the body corporate, such director, partner, manager, secretary or other officer of the body corporate, shall be deemed guilty of such contravention along with the body corporate and shall be punished accordingly :

Provided that in the case of a company as defined under the Companies Ordinance, 1984 (XLVII of 1984), only the Chief Executive as defined in the said Ordinance shall be liable under this section.

Explanation.—For the purposes of this section, "body corporate" includes a firm, association of persons and a society registered under the Societies Registration Act, 1860 (XXI of 1860), or under the Co-operative Societies Act, 1925 (VII of 1925).

19. **Offences by Government Agencies, local authorities or local councils.**—Where any contravention of this Act has been committed by any Government Agency, local authority or local council, and it is proved that such contravention has been committed with the consent or connivance of, or is attributable to any negligence on the part of the Head or any other officer of the Government Agency, local authority or local council, such Head or other officer shall also be deemed guilty of such contravention along with the Government Agency, local authority or local council and shall be liable to be proceeded against and punished accordingly.

20. **Environmental Tribunals.**—(1) The Federal Government may, by notification in the official gazette, establish as many Environmental Tribunals as it considers necessary and, where it establishes more than one Environmental Tribunal, it shall specify territorial limits within which, or the class of cases in respect of which, each one of them shall exercise jurisdiction under this Act.

(2) An Environmental Tribunal shall consist of a Chairperson who is, or has been, or is qualified for appointment as, a Judge of the High Court to be appointed after consultation with the Chief Justice of the High Court and two members to be appointed by the Federal Government of which at least one shall be a technical member with suitable professional qualifications and experience in the environmental field as may be prescribed.

(4) A decision of an Environmental Tribunal shall be expressed in terms of the opinion of the majority of its members, including the Chairperson, or if the case has been decided by the Chairperson and only one of the members and there is a difference of opinion between them, the decision of the Environmental Tribunal shall be expressed in terms of the opinion of the Chairperson.

(5) An Environmental Tribunal shall not, merely by reason of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded by, or produced, before it.

(6) An Environmental Tribunal may hold its sittings at such places within its territorial jurisdiction as the Chairperson may decide.

(7) No act or proceeding of an Environmental Tribunal shall be invalid by reason only of the existence of a vacancy in, or defect in the constitution of, the Environmental Tribunal.

(8) The terms and conditions of service of the Chairperson and members of the Environmental Tribunal shall be such as may be prescribed.

21. **Jurisdiction and powers of Environmental Tribunals.**—(1) An Environmental Tribunal shall exercise such powers and perform such functions as are, or may be, conferred upon or assigned to it by or under this Act, or the rules and regulations made thereunder.

(2) All contravention punishable under sub-section (1) of section 17 shall exclusively be triable by an Environmental Tribunal.

(3) An Environmental Tribunal shall not take cognizance of any offence triable under sub–section (2) except on a complaint in writing by–

(a) the Federal Agency or any Government Agency or local council ; and

(b) any aggrieved person, who has given notice of not less than thirty days to the Federal Agency or the Provincial Agency concerned of the alleged contravention and of his intention to make a complaint to the Environment Tribunal.

(4) In exercise of its criminal jurisdiction, the Environmental Tribunal shall

(6) In all matters with respect to which no procedure has been provided for in this Ordinance, the Environmental Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908).

(7) An Environmental Tribunal may, on application filed by any officer duly authorised in this behalf by the Director-General of the Federal Agency or Provincial Agency, issue bailable warrant for the arrest of any person against whom reasonable suspicion exists of his having been involved in contravention punishable under sub-section (1) of section 17 :

Provided that such warrant shall be applied for, issued, and executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided further that if the person arrested executes a bond with sufficient sureties in accordance with the endorsement on the warrant, he shall be released from custody, failing which he shall be taken or sent without delay to the officer-in-charge of the nearest police station.

(8) All proceedings before the Environmental Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and the Environmental Tribunal shall be deemed to be a court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(9) No court other than an Environmental Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of an Environmental Tribunal extends under this Act or the rules and regulations made thereunder.

(10) Where the Environmental Tribunal is satisfied that a complaint made to it under sub-section (3) is false and vexatious to the knowledge of the complainant, it may, by an order, direct the complainant to pay to the person complained against such compensatory costs which may extend to one hundred thousand rupees.

22. **Appeals to the Environmental Tribunal.**—(1) Any person aggrieved by any order or direction of the Federal Agency or any Provincial Agency under any provi-

(2) An appeal under sub-section (1) shall be heard by a Bench of not less than two Judges.

24. **Jurisdiction of Environmental Magistrates.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force, but subject to the provisions of this Act, all contraventions punishable under sub-section (2) of section 17 shall exclusively be triable by a judicial Magistrate of the first class as Environmental Magistrate especially empowered in this behalf by the High Court.

(2) An Environmental Magistrate shall be competent to impose any punishment specified in sub-sections (2) and (4) of section 17.

(3) An Environmental Magistrate shall not take cognizance of an offence triable under sub-section (1) except on a complaint in writing by—

(a) the Federal Agency, Provincial Agency, or Government Agency or local council; and

(b) any aggrieved person.

25. **Appeals from orders of Environmental Magistrates.**—Any person convicted of any contravention of this Act or the rules or regulations by an Environmental Magistrate may, within thirty days from the date of his conviction, appeal to the Court of Sessions, whose decision thereon shall be final.

26. **Power to delegate.**—(1) The Federal Government may, by notification in the official Gazette, delegate any of its or of the Federal Agency's powers and functions under this Act and the rules and regulations made thereunder to any Provincial Government, any Government Agency, local council or local authority.

(2) The Provincial Government may, by notification in the official Gazette, delegate any of its or of the Provincial Agency's powers or functions under this Act and the rules and regulations made thereunder to any Government Agency of such Provincial Government or any local council or local authority in the Province.

27. **Power to give directions.**—In the performance of their functions under this Act—

Provincial Agencies, the Director-Generals of the Federal Agency and the Provincial Agency, members, officers, employees, experts, advisors, committees or consultants of the Federal or Provincial Agencies or the Environmental Tribunal or Environmental Magistrates or any other person for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

29. **Dues recoverable as arrears of land revenue.**—Any dues recoverable by the Federal Agency or Provincial Agency under this Act, or the rules or regulations made thereunder shall be recoverable as arrears of land revenue.

30. **Act to override other laws.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

31. **Power to make rules.**—The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act including rules for implementing the provisions of the international environmental agreements, specified in the Schedule to this Act.

32. **Power to amend the Schedule.**—The Federal Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.

33. **Power to make regulations.**—(1) For carrying out the purposes of this Act, the Federal Agency may, by notification in the official Gazette and with the approval of the Federal Government, make regulations not inconsistent with the provisions of this Act or the rules made thereunder.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) submission of periodical reports, data or information by any Government agency, local authority or local council in respect of environmental matters;

(b) preparation of emergency contingency plans for coping with environmental hazards and pollution caused by accidents, natural disasters and calamities ;

(c) appointment of officers, advisors, experts, consultants and employees ;

(g) laying down of guidelines for preparation of initial environmental examination and environmental impact assessment and Development of procedures for their filing, review and approval ;

(h) providing procedures for handling hazardous substances; and

(i) installation of devices in, use of fuels by, and maintenance and testing of motor vehicles for control of air and noise pollution.

34. **Repeal, savings and succession.**—(1) The Pakistan Environmental Protection Ordinance, 1983 (XXXVII of 1983) is hereby repealed.

(2) Notwithstanding the repeal of the Pakistan Environmental Protection Ordinance, 1983 (XXVII of 1983), any rules or regulations or appointments made, orders passed, notifications issued, powers delegated, contracts entered into, proceedings commenced, rights acquired liabilities incurred, penalties, rates, fees or charges levied, things done or action taken under any provisions of that Ordinance shall, so far as they are not inconsistent with the provisions of this Act, be deemed to have been made, passed, issued, delegated, entered into, commenced, acquired, incurred, levied, done or taken under this Act.

(3) On the establishment of the Federal Agency and Provincial Agencies under this Act, all properties, assets and liabilities pertaining to the Federal Agency and Provincial Agencies established under that Ordinance shall vest in and be the properties, assets and liabilities, as the case may be, of the Federal Agency and Provincial Agency established under this Act.

SCHEDULE

(*See* section 31)

1. International Plant Protection Convention, Rome, 1951.

2. Plant Protection Agreement for the South-East Asia and Pacific Region (as amended), Rome, 1956.

6. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, 1973.

7. Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979.

8. Convention on the Law of the Sea, Montego Bay, 1982.

9. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985.

10. Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987 and amendments thereto.

11. Agreement on the Network of Aquaculture Centres in Asia and the Pacific, Bangkok, 1988.

12. Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal, Basel, 1989.

13. Convention on Biological Diversity, Rio De Janiero, 1992.

14. United Nations Framework Convention on Climate Change, Rio De Janiero, 1992.

Pakistan Climate Change Act 2017

[AS PASSED BY THE NATIONAL ASSEMBLY]

A

Bill

to meet Pakistan's obligations under international conventions relating to climate change and address the effects of climate change

WHEREASit is expedient tomeet Pakistan's obligations under international conventions relating to climate change andto provide for adoption of comprehensive adaptation and mitigation policies, plans, programmes, projects and other measures required to address the effects of climate change and for matters connected therewith and ancillary thereto:

It is hereby enacted as follows:–

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Pakistan Climate Change Act, 2017

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(a) "adaptation" means adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects which moderates harm or exploits beneficial opportunities;

(b) "Authority" means the Pakistan Climate Change Authority established under section 5;

(f) "Fund" means the Pakistan Climate Change Fund established under section 2;

(g) "Government" means the Federal Government;

(h) "greenhouse gas" means any gas that contributes to the greenhouse effect by absorbing infrared radiation produced by solar warming of the earth's surface and includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, nitrogen trifluoride and any other direct or indirect greenhouse gas as recognized by UNFCCC and IPCC from time to time;

(i) "mitigation" means efforts that seek to prevent or slow down the increase of atmospheric greenhouse gas concentrations by reducing current or future emissions and enhancing potential sinks for greenhouse gases;

(j) "prescribed" means prescribed by rules or regulations made under this Act;

(k) "regulations" means regulations made under this Act;

(l) "rules" means rules made under this Act;

(m) "Schedule" means a schedule to this Act; and

(n) "Tribunal" means the Environmental Tribunal set up under the Pakistan Environmental Protection Act, 1997 (Act No. XXXIV OF 1997) or the provincial environmental protection laws.

(2) The expressions and words used but not defined in this Act shall have the same meaning as in the Pakistan Environmental Protection Act, 1997 (Act No. XXXIV OF 1997).

CHAPTER II
PAKISTAN CLIMATE CHANGE COUNCIL

(a) Federal Ministers of the Divisions allocated with the subjects of climate change, finance, agriculture, food security and research, planning, development and reform, petroleum and natural resources, science and technology, water and power and foreign affair;

(b) Chief Ministers of the Provinces;

(c) Ministers-in-charge of the department allocated with subject of environment in the Provinces;

(d) such other persons not exceeding thirty as the Prime Minister may appoint, of which at least twenty shall be non-officials, including representatives of the Chambers of Commerce and Industry, non-governmental organizations concerned with climate change, the environment and development and scientists, researchers, technical experts and educationists;

(e) Chairman, National Disaster Management Authority established under the National Disaster Management Act, 2010 (XXIV of 2010);

(f) Chairman, Pakistan Climate Change Authority; and

(g) Secretary of the Division allocated with the subject of climate change, who shall also be the Secretary of the Council.

(2) The Council may invite the Prime Minister, Azad Jammu and Kashmir and Chief Minister, Gilgit- Baltistan to participate in the meetings of the Council as and when required:

(3) The Division allocated with the subject of climate change shall act as Secretariat of the Council.

(4) Members of the Council, other than *ex-officio* members, shall be appointed in accordance with the prescribed procedure and shall hold office for a term of three years.

(5) The Council shall hold meetings as and when necessary, but not less than two meetings shall be held in a year.

Government Agency or non-governmental organization or other person possessing specialized knowledge of any subject.

4. **Functions and powers of the Council.-** (1) The Council shall-

(a) co-ordinate and supervise enforcement of the provisions of this Act

(b) monitor implementation of international agreements relating to climate change specified in the Schedule;

(c) coordinate, supervise and guide mainstreaming of climate change concerns into decision-making by Federal and Provincial Government's ministries, divisions, departments and agencies so as to create enabling conditions for integrated climate-compatible and climate-resilient development processes in various sectors of the economy;

(d) approve and monitor implementation of comprehensive adaptation and mitigation policies, strategies, plans, programmes, projects and other measures formulated by the Authority to meet Pakistan's obligations under international conventions and agreements relating to climate change including in particular the Sustainable Development Goals (SDGs);

(e) monitor implementation of the National Adaptation Plan and its constituent provincial and local adaptation action plans, the National Appropriate Mitigation Action Framework and National Communication submitted to the concerned Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC);

(f) approve guidelines for the protection and conservation of renewable and non-renewable resources, species, habitats, and biodiversity in general adversely affected or threatened by climate change; and

sustainable development or to undertake research in any aspect of climate change.

CHAPTER III
PAKISTAN CLIMATE CHANGE AUTHORITY

5. Establishment of the Pakistan Climate Change Authority.- (1) The **Minister-in-charge** of the Federal Government shall, by notification in the official Gazette, establish the Pakistan Climate Change Authority, hereinafter referred to as the Authority, to exercise the powers and perform the functions assigned to it under this Act and the rules and regulations made thereunder.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in the said name, be capable of—

(a) suing and being sued;
(b) acquiring or disposing of moveable and immovable property;
(c) borrowing money;
(d) entering into contracts; and
(e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act.

(3) The headquarters of the Authority shall be in Islamabad and the Authority may establish offices at other places as and when required.

6. Composition of the Authority.- (1)The Authority shall comprise the Chairperson, Member (Adaptation), Member (Mitigation), Member (Climate Finance), Member (Coordination) and one Member from each province to be nominated by the respective Provincial Ministers-in-charge.

(3) The members including Chairperson of the Authority shall be appointed by the Prime Minister on such terms and conditions as he may deem fit, keeping in view their qualifications and experience.

(4) The Chairperson and members shall be scientists, academicians, professionals, serving or retired government servants, industrialists, agriculturists or other technocrats with at least fifteen year's experience in fields related to climate change and the environment, with a distinguished service record.

(7) The Authority may, for assistance in performance of its functions, invite a representative of any Government Agency or non-governmental organization or technical expert or other person possessing specialized knowledge of any subject.

7. Officers and staff of the Authority- (1) All professional, technical and administrative officers and staff of the Authority shall be appointed by the Authority, or obtained from other Federal **or Provincial** Government agencies on deputation basis, and shall be entitled to such salaries, allowances and other terms and conditions of service as may be prescribed by regulations:

(2) The Authority shall ensure that all appointments are made in a transparent manner and adequate and equal treatment is given to women, minorities and disabled persons.

(3) The officers and staff of the Authority shall have such powers and shall perform such functions as may be assigned to them by the Chairperson.

(4) The officers and staff of the Authority shall act in accordance with the mandate assigned and the directives given by the Chairperson.

8. Functions of the Authority.-(1) Functions of the Authority shall be to—

(a) formulate, comprehensive adaptation and mitigation policies, plans, programmes, projects and measures designed to address the effects of climate change and meet Pakistan's obligations under international conventions and agreements relating to climate change and within the framework of a national climate change policy as may be approved by the Federal Government from time to time;

(b) establish institutional and policy mechanisms for implementation of Federal and provincial adaptation and mitigation policies, plans, programmes, projects and measures, including plans for renewable energy and clean technology measures for energy efficiency and energy conservation and awareness-raising and capacity-building programmes;

(c) prepare suitable adaptation and mitigation projects for submission to international and local institutions for funding, including the Clean Development Mechanism, Global Environmental Facility, Green Climate Fund and Adaptation Fund;

(d) prepare the National Adaptation Plan and its constituent provincial and local adaptation action plans, the Nationally

Appropriate Mitigation Action Framework and the Intended Nationally Determined Contributions, Nationally Determined Contributions and National Communication to be submitted to the concerned Secretariat of the United Nations Framework Convention on Climate Change and monitor implementation thereof;

(e) carry out Technology Needs Assessment and prepare Climate Change Technology Action Plan in accordance with international best practices for seeking technical and financial support, amongst others, through the Technology Mechanism;

(f) prepare projects for funding under the Reducing Emissions from Deforestation and Forest Degradation (REDD+) Mechanism;

(g) prepare the National Climate Change Report for consideration of the Council;

(h) formulate, and after approval of the Council, coordinate implementation of low carbon and green growth strategies;

(i) formulate guidelines for the protection and conservation of renewable and non-renewable resources, species, habitats, and biodiversity in general which are adversely affected or threatened by climate change;

(j) advise the Government regarding appropriate legislative, policy and implementation measures and actions relating to disaster preparedness, capacity building, institutional strengthening and awareness raising in relevant sectors affected by climate change;

(k) advise the Government regarding implementation of international conventions, treaties and agreements on climate change and the environment to which Pakistan is a party and fulfill reporting requirements thereunder;

(l) design, establish and maintain a national registry and database on greenhouse gas emissions in accordance with internationally adopted emissions quantification methodologies, standards and protocols;

(n) prepare policy papers and concept notes and provide technical input for formulating national policy positions for international conferences or negotiations;

(o) coordinate conduct of research on current and emerging issues of climate change, particularly assessment of Pakistan's vulnerability to climate change, identification of climate change opportunities and technology transfer, in association with specialized research institutions and disseminate research findings and outputs to stakeholders;

(p) undertake education and awareness campaigns and programs to enhance understanding and awareness of different aspects of climate change and promote their integration in educational curricula;

(q) work in collaboration with relevant Government Agencies and non-governmental organizations and after the conduct of relevant research and studies, set targets and coordinate actions for the reduction of greenhouse gas emissions and development of carbon markets;

(r) design programmes providing for incentives relating to matters of climate change, including incentives for reduced emissions from deforestation and degradation;

(s) mobilize resources for the purposes of achieving the objects and purposes of this Act;

(t) regularly publish, update and disseminate, through electronic and other means, climate change strategies, policies, plans, programmes and other information; and

(u) perform such functions as may be assigned to it by the Council or by the Government for purposes of this Act.

(2) To assist the Authority in the discharge of its functions, **the Minister-in-charge of** the Federal Government may establish Advisory Committees for various sectors and appoint as members thereof eminent representatives of the relevant sector from educational institutions, research institutes and non-governmental organizations.

(3) In the discharge of its functions the Authority shall be guided by, amongst others,–

(a) the latest scientific knowledge and research relating to climate change in general and renewable energy and clean technology in particular, environmental considerations, including likely impacts on ecosystems, bio-diversity and forestry and socio-economic development objectives, including gender aspects; and

(b) policy advice of the Division allocated with the subject of climate change.

9. Annual report.-(1) At the end of each financial year, the Authority shall prepare an annual report, which shall include-

(a) a description of its activities;

(b) progress of implementation of major climate change actions and difficulties relating thereto;

(c) its plans for the next financial year;

(d) audited accounts of the Authority; and

(e) any other relevant information relating to functions of the Authority.

(2) The report prepared under sub-section (1) shall be laid by the Minister-in-charge of the Government before the Majlis-e-Shoora (Parliament).

10. Powers of the Authority.- (1) The Authority shall have all the powers necessary to execute its functions under this Act.

(2) Without prejudice to the generality of sub-section (1), the Authority shall have power to—

(a) manage, control and administer assets of the Authority in such manner so as to best serve its functions and the purposes of this Act;

(b) enter into contracts or establish partnerships or associate with entities and organizations as it may consider appropriate to support its functions, provided that agreement with foreign governments and organizations shall be entered into only

(c) where necessary or on request, provide services or give guidance to public and private entities in relation to climate change matters; and

(d) solicit, gather, obtain and verify any relevant information and data from any Federal or Provincial Ministry, Division or Department, or any public or private entity in connection with the performance of the functions of the Authority.

11. Functions and powers of the Chairperson- (1) The Chairperson shall be the chief executive of the Authority and shall, with the assistance of the members,-

(a) perform the functions and exercise the powers of the Authority; and

(b) discharge such duties and perform such functions as are assigned to him by the Council or by the Government.

(2) Until the Council is duly constituted, the Chairperson shall, subject to such directions as the Government may give from time to time, perform the functions and exercise the powers of the Council.

(3) The Chairperson may, by general or special order, delegate any of his functions or powers to officers or staff appointed under section 7.

CHAPTER IV
PAKISTAN CLIMATE CHANGE FUND

12. Pakistan Climate Change Fund.-(1) There is established a fund to be known as the Pakistan Climate Change Fund, hereinafter referred as the Fund.

(2) There shall be paid into the Fund—

(a) such monies as may be received by the Fund in the form of donations, endowments, grants and gifts from whatever source and specifically designated for the Fund;

(b) such sums of money as may be raised by the Authority for the execution of the programmes and projects of the Authority; and

(c) such monies as may, by or under any law, be payable to the Fund.

(3) The Fund shall be utilized, in accordance with such procedure as may be prescribed, for—

(a) expenditure incurred by the Authority in the exercise, discharge and performance of its functions;

(b) operational and administration expenses of the Fund;

(c) financial assistance to suitable adaptation and mitigation projects and measures designed to combat the adverse effects of climate change, the sustainable development of resources and for research in any aspect of climate change; and

(d) any other purpose which in the opinion of the **Council** shall help achieve the purposes of this Act.

13. Management of the Fund.—(1) The Fund shall be managed by the Authority;

(2) In accordance with such procedure and such criteria as may be prescribed, the Authority shall have the power to—

(a) sanction financial assistance for eligible projects in accordance with guidelines framed by the Council;

(b) invest moneys held in the Fund in such profit-bearing Government bonds, savings schemes and securities as it may deem suitable; and

(c) take such measures and exercise such powers as may be necessary for utilization of the Fund for the purposes specified in sub-section (3) of section 12.

(3) The Authority may constitute committees of its members to undertake regular monitoring of projects financed from the Fund and submit progress reports to the Authority.

(4) The Authority shall prepare an annual report incorporating its annual audited accounts and performance evaluation based on the progress reports mentioned in sub-section (3).

CHAPTER V
MISCELLANEOUS

14. Indemnity.—No suit, prosecution or other legal proceedings shall lie against the Federal and Provincial Governments, the Council, the Authority, the Chairperson, members, officers, employees, experts, advisers, committees and consultants of the Federal Government or the Environmental Tribunal or Environmental Magistrates or any other person for anything which is in good faith

done or intended to be done under this Act or the rules or regulations made thereunder.

15. Dues recoverable as arrears of land revenue.—Any dues recoverable by the Authority under this Act or the rules or regulations shall be recoverable as arrears of land revenue.

16. Act to override other laws.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

17. Power to make rules.—The Minister-in-charge of the Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act , including rules for implementing the provisions of the International Agreements relating to climate change, specified in the Schedule.

18. Power to amend the Schedule._ The Minister-in-charge of the Federal Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.

19. Power to make regulations.—(1) For carrying out the purposes of this Act, the Authority may by notification in the official Gazette and with the approval of the Minister-in-charge of the Federal Government, make regulations not inconsistent with the provisions of this Act and the rules made thereunder.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) submission of periodical reports, data or information by any Government agency, local authority or local council in respect of matters relating to climate change;

(b) preparation of emergency contingency plans for coping with extreme climatic events, natural disasters and calamities; and

(c) appointment of officers, advisers, experts, consultants and employees.

SCHEDULE

1. United Nations Framework Convention on Climate Change (UNFCCC), Rio De Janeiro, 1992 ;
2. Kyoto Protocol to the UNFCCC, 1997;
3. The Paris Agreement, 2015; and
4. Any other agreement relating to climate change to which Pakistan is a signatory.

STATEMENT OF OBJECTS AND REASONS

Pakistan's per capita emissions of greenhouse gases today is one of the lowest in the world. Yet it ranks amongst the top ten countries most affected by climate change during the last twenty years. It now regularly suffers from the vagaries of climate change, including climate-induced phenomena such as recurrent floods, droughts, desertification, glacial melt, and sea-water intrusion.

2. Extreme climatic events have resulted in tragic loss of lives and colossal damage to the economy. Indeed, they have significantly impeded our efforts to promote sustainable growth and development and to ensure economic prosperity of the people.

3. The Framework for Implementation of the National Climate Change Policy for the period 2014-2030 serves to integrate climate-friendly policies into our national and economic planning. The Framework spells out appropriate adaptation actions as well as mitigation measures covering all sectors of the economy.

4. "Vision 2025", our blueprint for a future-oriented and growth-centric roadmap for Pakistan, clearly recognizes global warming and climate change as priority areas for effective action by the Government.

5. Pakistan is a party to the United Nations Framework Convention on Climate Change (UNFCCC), 1992; and Kyoto Protocol to the UNFCCC, 1997. It is also initiated the process for ratifying the Paris Agreement, 2015 which recognizes that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus is a global challenge, requiring the widest possible cooperation by all countries.

6. Implementation of the UNFCCC, Kyoto Protocol and the Paris Agreement involves a large number of comprehensive and extensive adaptation and mitigation actions across all sectors of the economy. This is an enormous task which is of a multi-disciplinary, inter-provincial and inter-ministerial nature, requiring that it be dealt with at the national level. There is also an urgent need to prepare, on priority basis, a portfolio of projects for seeking funding from the potentially huge amounts of global climate change finance likely to be available.

7. For the aforesaid purposes amongst others, it is considered necessary to establish an independent Pakistan Climate Change Authority which will, under the guidance of a high-powered Pakistan Climate Change Council (chaired by the Prime Minister and with representation from all Provinces, including the Chief Ministers), provide a framework for mitigating and adapting to the effects of the changing climate on various sectors of the economy and developing response

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strategies to the effects of climate change. The proposed Authority will also identify and supervise the transfer of appropriate technology, including renewable technology, and strengthen capacity-building measures.

8. The Bill also establishes a Pakistan Climate Change Fund, managed by a Board. Money from the Fund will be utilized to meet expenses of both the Authority and the Fund itself and for financial assistance to suitable adaptation and mitigation projects and measures designed inter-alia to combat the adverse effects of climate change.

9. The Bill has been developed with the support and participation of various governmental and non-governmental stakeholders in the climate change arena. It is also in accordance with international best practices and standards.

10. By passing this Bill, Pakistan will join only a handful of countries who have demonstrated their commitment to combating the adverse effects of climate change by enacting legislation specifically for the purpose.

MR. ZAHID HAMID,
Minister for Law and Justice and Climate Change,
Minister-in-Charge

Sindh Environmental Protection Act 2014

Sindh Act No: VIII of 2014

EXTRAORDINARY **Registered No. M324**

The Sindh Government Gazette

Published by Authority

KARACHI THURSDAY MARCH 20, 2014

PART-IV

PROVINCIAL ASSEMBLY OF SINDH
NOTIFICATION
KARACHI, THE 20TH MARCH, 2014.

NO.PAS/Legis-B-06/2014- The Sindh Environmental Protection Bill, 2014 having been passed by the Provincial Assembly of Sindh on 24th February, 2014 and assented to by the Governor of Sindh on 19th March, 2014 is hereby published as an Act of the Legislature of Sindh.

THE SINDH ENVIRONMENTAL PROTECTION ACT, 2014.

SINDH ACT NO. VIII OF 2014.

AN
ACT

to provide for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development.

WHEREAS it is expedient to provide for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution, promotion of sustainable development, and for matters connected therewith and incidental thereto; **Preamble.**

PART-I

It is hereby enacted as follows:-

1. (1) This Act may be called the Sindh Environmental Protection Act, 2014 **Short title and commencement.**

(2) It extends to the whole of the Province of Sindh.
(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context-

(i) "adverse environmental effect" means impairment of, or damage to, the environment and includes—

(a) impairment of, or damage to, human health and safety or to biodiversity or property;

(b) pollution; and

(c) any adverse environmental effect as may be specified in the rules or regulations made under this Act;

(ii) "Agency" means the Sindh Environmental Protection Agency established under section 5 of this Act;

(iii) "agricultural waste" means waste from farm and agricultural activities including poultry, cattle farming, animal husbandry residues from the use of fertilizers, pesticides and other farm chemicals and agricultural runoff;

(iv) "air pollutant" means any substance that causes pollution of air and includes soot, smoke, dust particles, odor, light, electro-magnetic, radiation, heat, fumes, combustion exhaust, exhaust gases, noxious gases, hazardous substances and radioactive substances;

(v) "biodiversity" or "biological diversity" means the variability among living organisms from all sources, including inter-alia terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;

(vi) "biosafety" means the mechanism developing through policy and procedure to ensure human health and the environmentally safe application of biotechnology;

(vii) "Council" means the Sindh Environmental Protection Council established under section 3 of this Act;

(viii) "discharge" means spilling, leaking, pumping, depositing, seeping, releasing, flowing-out, pouring, emitting, emptying or dumping into the land, water or atmosphere;

(ix) "ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

(x) "effluent" means any material in solid, liquid or gaseous form or combination thereof being discharged from industrial activity or any other source and includes a slurry, suspension or vapour;

(xi) "emission standards" means the permissible standards established by the Agency for emission of air pollutants and noise and for discharge of effluent and waste;

(xii) "environment" means-
(a) air, water, land and natural resources;
(b) all layers of the atmosphere;
(c) all organic and inorganic matters and living organisms;
(d) ecosystems and ecological relationships;
(e) buildings, structures, roads, facilities and works;
(f) all social and economic conditions affecting community life; and
(g) the inter-relationship between any of the factors in sub-clause (a) to (f) made under this Act;

(xiii) "environmental aspect" means an organization's activities or services that can interact with the environment;

(xiv) "environment audit" means a systemic scrutiny of environmental performance of an organization, factory, company or manufacturing and production unit regarding to its operations;

(xv) "environmental impact assessment" means an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigation and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed;

(xvi) "Environmental Management Plan" means a site specific plan developed to ensure that all necessary measures are identified and implemented in order to protect the environment and comply with the environmental legislation;

(xvii) "Environmental Protection Order" means an order passed under Section 21 made under this Act.

(xviii) "Environmental Protection Tribunal" means the Environmental Protection Tribunal constituted under section 25 of this Act ;

(xxix) "Environmental Review" means a quantitative and qualitative assessment of documents submitted by proponent, comments from public and Government agencies or organizations;

(xx) "factory" means any premises in which industrial activity is being undertaken;

(xxi) "genetically modified organism" means any organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology and which does not occur naturally through mating and or recombination and includes both living and non-living modified organisms;

(xxii) "Government" means the Government of Sindh;

(xxiii) "Government Agency" includes:-

(a) A department, attached department or any other office of Government; and

(b) A development authority, local authority, company body corporate established or control by Government;

(xxiv) "Court" means the Court of the Judicial Magistrate First Class;

(xxv) "hazardous substance" means-

(a) a substance or mixture of substances, other than a pesticide as defined in the Agricultural Pesticides Ordinance, 1971 (II of 1971), which, by reason of its chemical activity or toxic, explosive, flammable, corrosive; radioactive or other characteristics, causes, or is likely to cause, directly or in combination with other matters an adverse environmental effect; and

(b) any substance which may be prescribed as a hazardous substance;

(xxvi) "hazardous waste" means waste which is or which contains a hazardous substance or which may be prescribed as hazardous waste, hospital waste, nuclear waste, obsolete pesticides and persistent organic pollutants;

(xxvii)"hospital waste" means waste medical supplies and materials of all kinds, and waste blood, tissue, organs and other parts of the human and animal bodies, from hospitals, clinics, laboratories and veterinary facilities;

(xxviii) "industrial activity" means any operation or process for manufacturing, making, formulating, synthesising, altering, repairing, ornamenting, finishing, packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or for mining, for oil and gas exploration and development, or for pumping water or sewage, or for generating, transforming or transmitting power or for any other industrial or commercial purposes;

(xxix) "industrial waste" means waste resulting from an industrial activity;

(xxx) "initial environmental examination" means a preliminary environmental review of the reasonably foreseeable qualitative and quantitative impacts on the environment of a proposed project to determine whether it is likely to cause an adverse environmental effect for requiring preparation of an environmental impact assessment;

(xxxi) "local authority" means any agency set up or designated by Government, by notification in the official Gazette, to be a local authority for the purposes of this Act;

(xxxii) "local council" means a local council constituted or established under a law relating to local government;

(xxxiii) "motor vehicle" means any mechanically propelled vehicle adapted for use upon land whether its power of propulsion is transmitted thereto from an external or internal source, and includes a chassis to which a body has not been attached, and a trailer, but does not include a vehicle running upon fixed rails;

(xxxiv) "municipal waste" includes sewage, refuse, garbage, waste from abattoirs, sludge and human excreta and the like;

(xxxv) "noise" means the intensity, duration and character of sounds from all sources, and includes vibration;

(xxvi) "non degradable plastic products" means a plastic product which are made from the non-biodegradable substances;

(xxxvii) "nuclear waste" means waste from any nuclear reactor or nuclear plant or other nuclear energy system, whether or not such waste is radioactive;

(xxxviii) "Oxo-biodegradable Plastic Products" means a plastic product made of a polymer by adding a pro-degrading additive containing a transition metal salt, except cobalt, which cause the plastic to degrade and bio-grade from oxidative and cell mediated phenomena either simultaneously or successfully;

(xxxix) "person" means any natural person or legal entity and includes an individual, firm, association, partnership, society, group, company, corporation, co-operative society, Government Agency, non-governmental organization, community-based organization, village organization, local council or local authority and, in the case of a vessel, the master or other person having for the time being the charge or control of the vessel;

(xl) "pollution" means the contamination of air, land or water by the discharge or emission of effluent or wastes or air pollutants or noise or other matter which either directly or indirectly or in combination with other discharges or substances alters unfavorably the chemical, physical, biological, radiational, thermal or radiological or aesthetic properties of the air, land or water or which may, or is likely to make the air, land or water unclean, noxious or impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to biodiversity.

(xli) "prescribed" means prescribed by rules made under this Act;

(xlii) "project" means any activity, plan, scheme, proposal or undertaking involving any change in the environment and includes-

(a) construction or use of buildings or other works;

(b) construction or use of roads or other transport systems;

(c) construction or operation of factories or other installations;

(d) mineral prospecting, mining, quarrying, stone-crushing, drilling and the like;

(e) any change of land use or water use; and

(f) alteration, expansion, repair, decommissioning or abandonment of existing buildings or other works, roads or other transport systems, factories or other installations;

(xliii) "proponent" means the person who proposes or intends to undertake a project;

(xliv) "regulations" means regulations made under this Act;

(xlv) "rules" means rules made under this Act;

(xlvi) "sewage" means liquid or semi-solid wastes and sludge from sanitary conveniences, kitchens, laundries, washing and similar activities and from any sewerage system or sewage disposal works;

(xlvii) "Schedule Plastic Products" means all types of flexible plastic packaging and disposable plastic products made of Polythene, Polypropylene, Polystyrene and Poly-ethylene Terephthalate (PET), used for food and non-food items, like shopping bags, garbage bags, snacks packs, water and milk packaging, shrink wraps, bubble pellet wraps, films, liners, woven or non-woven bags, mulch films;

(xlviii) "Sindh Environmental Quality Standards" means standards established by the Agency under clause (e) of sub-section(1) of section 6 and approved by the Council under clause (c) of sub-section(1) of section 4 made under this Act;

(xlix) "standards" means qualitative and quantitative standards for discharge of effluent and wastes and for emission of air pollutants and noise either for general applicability or for a particular area, or from a particular production process, or for a particular product, and includes the Sindh Environmental Quality Standards, emission standards and other standards established under this Act and the rules and regulations;

(l) "strategic environmental assessment" mean an analysis of a proposed policy, legislation, plan or programme to determine whether the principles of sustainable development have been integrated therein and to identify its likely environmental effects and such components as require an initial environmental examination or environmental impact assessment;

(li) "sustainable development" means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs;

(lii) "trans-boundary environmental impacts" means environmental impact arising from beyond the boundaries or limits of Sindh province and causing any adverse environmental impact or pollution in the air, land, water and coaster water of Sindh province;

(liii) "waste" means any substance or object which has been, is being or is intended to be, discarded or disposed-of, and includes liquid waste, solid waste, waste gases, suspended waste, industrial waste, agricultural waste, nuclear waste, municipal waste, hospital waste, used polyethylene bags and residues from the incineration of all types of waste.

(liv) "waters (coastal waters, internal waters, territorial waters and historical waters)" means such limits of the waters adjacent to the land territory as may be specified in the Territorial Waters and Maritime Zones Act, 1976 (LXXXII of 1976).

PART-II
THE SINDH ENVIRONMENTAL PROTECTION COUNCIL.

Establishment of the Sindh Environmental Protection Council.

3. (1) The Government of Sindh shall, by notification in the official Gazette, establish a Council to be known as the Sindh Environmental Protection Council consisting of-

(i)	Chief Minister or such other person as the Chief Minister may nominate in this behalf.	**Chairperson**
(ii)	Minister-in-charge of the Environment Protection Department.	**Vice Chairperson**
(iii)	Additional Chief Secretary, Planning and Development Department, Government of Sindh.	**Ex-officio Member**
(iv)	Secretaries of the Environment, Finance, Public Health Engineering, Irrigation, Health, Agriculture, Local Government, Industries, Live Stock and Fisheries, Forest and Wildlife, Energy, Education, Departments of Government of Sindh and the divisional commissioners of Sindh.	**Ex-officio Members**

(v)	Such other persons not exceeding twenty- five as Government may appoint from representatives of the Chambers of Commerce and Industry and industrial associations, representatives of the Chambers of Agriculture, the medical and legal professions, trade unions, non-governmental organizations concerned with the environment and sustainable development, and scientists, technical experts and educationists.	**Non-official Members**
(vi)	Director General, Sindh Environment Protection Agency	Member / Secretary
(vii)	**Two Members of the Provincial Assembly of Sindh amongst the eleven Members of the Standing Committee on Environment nominated by the Speaker**	**Members**

2) The Members of the Council, other than ex-officio members, shall be appointed in accordance with the prescribed procedure.

(3) A non-official member, unless he sooner resigns or is removed, shall hold office for a term of three years and shall be eligible for re-appointment but shall not hold office for more than two terms.

(4)The Council shall frame its own Rules of Procedure.

(5) The Council shall hold meetings, as and when necessary, but not less than two meetings, shall be held in a year.

(6) The Council may constitute committees of its members and entrust them with such functions as it may deem fit, and the recommendations of the committees shall be submitted to the Council for approval.

(7) The Council, or any of its committees, may invite any technical expert or representative of any Government Agency or non-governmental organization or other person possessing specialized knowledge of any subject for assistance in performance of its functions.

Functions and Powers of the Council.

4. (1) The Council shall-

(a) co-ordinate and supervise the enforcement of the provisions of this Act and other laws relating to the environment in the Province;

(b) approve comprehensive provincial environmental and sustainable development policies and ensure their implementation within the framework of a conservation strategy and sustainable development plan as may be approved by Government from time to time;

(c) approve the Sindh Environmental Quality Standards;

(d) provide guidelines for the protection and conservation of species, habitats, and biodiversity in general and for the conservation of renewable and non-renewable resources;

(e) coordinate integration of the principles and concerns of sustainable development into socio-economic and development policies, plans and programmes at the provincial, district and local levels;

(f) consider the annual Sindh Environment report and give appropriate directions thereon and cause it to be laid before the Provincial Assembly;

(g) deal with inter-provincial and federal-provincial issues, and liaise and coordinate with other Provinces through appropriate inter-provincial forums regarding formulation and implementation of standards and policies relating to environmental matters with an inter-provincial impact;

(h) provide guidelines for biosafety and for the use of genetically modified organisms; and

(i) assist the Federal Government or Federal Agency in implementation and or administration of various provision of United Nation Convention on Laws on Seas, 1980 (UNCLOS) in coastal waters of the province.

(2). The Council may, either itself or on the request of any person or organization, direct the Agency or any Government Agency to prepare, submit, promote or implement projects for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, and the sustainable development of resources or to undertake research in any specified aspect of environment.

PART-III
THE SINDH ENVIRONMENTAL PROTECTION AGENCY

Establishment of the Sindh Environmental Protection Agency.

5. (1) Government shall, by notification in the Official Gazette, establish the Sindh Environmental Protection Agency, to exercise the powers and perform the functions assigned to it under the provisions of this Act and the rules and regulations made thereunder.

(2) The Agency shall be headed by a Director General who shall be appointed by Government on such terms and conditions as it may determine.

(3) The Agency shall have such administrative, technical and legal staff as Government may specify, to be appointed in accordance with such procedure as may be prescribed.

(4) The powers and functions of the Agency shall be exercised and performed by the Director General.

(5) The Director General may, by general or special order, delegate any of these powers and functions to staff appointed under sub-section (3).

(6) For assisting the Agency in the discharge of its functions Government shall establish Advisory Committees for various sectors and appoint as members thereof eminent representatives of the relevant sector, educational institutions, research institutes and non-governmental organizations.

Functions of the Agency.

6. (1) The Agency shall –

(a) administer and implement the provisions of this Act and the rules and regulations;

(b) prepare, in co-ordination with the appropriate Government Agency or local council and, in consultation with the concerned Advisory Committees where established, environmental policies for the approval of the Council;

(c) take all necessary measures for the implementation of the environmental policies approved by the Council;

(d) prepare and publish an annual Sindh Environment Report on the state of the environment in the province;

(e) prepare or revise and establish the Sindh Environmental Quality Standards with approval of the Council:

Provided that before seeking approval of the Council, the Agency shall publish the proposed Sindh Environmental Quality Standards for public opinion in accordance with the prescribed procedure;

(f) ensure enforcement of the Sindh Environmental Quality Standards;

(g)where the quality of ambient air, water, land or noise so requires, the Agency may, by notification in the Official Gazette establish different standards for discharge or emission from different sources and for different areas and conditions as may be necessary:

Provided that where these standards are less stringent than the Sindh Environmental Quality Standards; prior approval of the Council shall be obtained;

(h) establish systems and procedures for surveys, surveillance, monitoring, measurement, examination, investigation, research, inspection and audit to prevent and control pollution, and to estimate the costs of cleaning up pollution and rehabilitating the environment in various sectors;

(i) take measures to promote research and the development of science and technology which may contribute to the prevention of pollution, protection of the environment, and sustainable development;

(j) issue licences, approval for the consignment, handling, transport, treatment, disposal of, storage, handling or otherwise dealing with hazardous substances;

(k) certify laboratories as approved laboratories for conducting tests and analysis and one or more research institutes as environmental research institutes for conducting research and investigation for the purposes of this Act;

(l) identify the needs for and initiate legislation in various sectors of the environment;

(m) provide assistance to relevant Federal and Provincial Government Agencies in the management of environment accidents and natural and environmental disasters, including conduct of inquiry thereto;

(n) render advice and assistance in environmental matters including such information and data available with it as may be required for carrying out the purposes of this Act:

Provided that the disclosure of such information shall be subject to the restrictions specified in Part XI (Access to Information);

(o) assist Government Agencies, local councils, local authorities and other persons to implement schemes for the proper disposal of wastes so as to ensure compliance with the Sindh Environmental Quality Standards;

(p) provide information and guidance to the public on environmental matters;

(q) recommend environmental courses, topics, literature and books for incorporation in the curricula and syllabi of educational institutions;

(r) promote public education and awareness of environmental issues through mass media and other means including seminars and workshops;

(s) establish and maintain mechanisms, including its own website, to disseminate information, subject to the provisions of this Act, regarding policies, plans and decisions of the Government, the Council and the Agency, relating to the environment;

(t) specify safeguards for the prevention of accidents and disasters which may cause pollution, collaborate with the concerned persons in the preparation of contingency plans for control of such accidents and disasters, and co-ordinate implementation of such plans;

(u) review and approve mitigation plans and give guidance and directions, where necessary, relating to clean up operations ordered under this Act;

(v) encourage the formation and working of non-governmental organizations, community organizations and village organizations to prevent and control pollution and promote sustainable development;

(w) take or cause to be taken all necessary measures for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution and promotion of sustainable development; and

(x) perform any function that the Council may assign to it.

(2) The Agency may -

(a) undertake inquiries or investigation into environmental issues, either of its own accord or upon complaint from any person or organization;

(b) request any person to furnish any information or data relevant to its functions;

(c) initiate, with the approval of Government, requests for foreign assistance in support of the purposes of this Act and enter into arrangements with foreign agencies or organizations for the exchange of material or information and participate in international seminars or meetings;

(d) recommend to Government and the Council the adoption of financial and fiscal programmes, schemes or measures for achieving environmental objectives and goals and the purposes of this Act, including -

(i) taxes, duties, cesses and other levies; and

(ii) incentives, prizes, awards, rewards, subsidies, tax exemptions, rebates and depreciation allowances;

(e) establish and maintain laboratories to help in the performance of its functions under this Act and to conduct research in various aspects of the environment and provide or arrange necessary assistance for the establishment of similar laboratories in the private sector;

(f) arrange, in accordance with such procedure as may be prescribed, financial assistance for projects designed to facilitate in discharge of its functions; and

(g) acquire assistance of concerned authorities of district administration and other relevant agencies, departments and police assistance for enforcement of this Act.

Powers of the Agency.

7. Subject to the provisions of this Act, the Agency may-

(a) lease, purchase, acquire, own, hold, improve, use or otherwise deal in and with any property both moveable and immovable;

(b) sell, convey, mortgage, pledge, exchange or otherwise dispose of its property and assets;

(c) fix and realize fees, rates and charges for rendering any service or providing any facility, information or data under this Act or its rules and regulations;

(d) enter into contracts, execute instruments, incur liabilities and do all acts or things necessary for proper management and conduct of its business;

(e) appoint, with the approval of Government and in accordance with such procedures as may be prescribed, such advisers, experts and consultants as it considers necessary for the efficient performance of its functions on such terms and conditions as it may deem fit;

(f) summon and enforce the attendance of any person and require him to supply any information or document needed for the conduct of any enquiry or investigation into any environmental issue;

(g) Director General may authorize any officer or official to enter and inspect or under a search warrant issued by Environmental Protection Tribunal or a Court, search at any time, any land, building, premises, vehicle or vessel or other place where or in which there are reasonable grounds to believe that an offence under this Act has been, or is being, or likely to be committed;

(h) take samples of any materials, products, articles or substances or of the effluent, wastes or air pollutants being discharged or emitted or of air, water or land in the vicinity of the discharge or emission;

(i) arrange for the testing and analysis of samples at a certified laboratory;

(j) confiscate any article used in the commission of the offence where the offender is not known or cannot be found within a reasonable time:

Provided that the powers under clauses (f), (g), (h) (i), and (j) shall be exercised in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) or the rules and regulations and under the direction of the Environmental Protection Tribunal or a Court; and

(k) establish the Sindh Environmental Co-ordination Committee comprising the Director-General as its Chairman and such other persons as Government shall appoint as its members to exercise such powers and perform such functions as shall be delegated or assigned to it by Government for carrying out the purposes of this Act and for ensuring coordination among Government Agencies in implementation of environmental policies.

PART-IV
SINDH SUSTAINABLE DEVELOPMENT FUND

Establishment of the Sindh Sustainable Development Fund.

8. (1) There shall be established a Sindh Sustainable Development Fund.

(2) The Sindh Sustainable Development Fund shall be derived from the following sources, namely—

(a) allocations and grants made or loans advanced by the Government of Sindh or by the Federal Government;

(b) aid and assistance, grants, advances, donations and other non-obligatory funds received from foreign governments, national or international agencies, and non-governmental organizations; and

(c) voluntary contributions from private, corporate, multinational organizations and other persons.

(d) Any fees generated under the provision of this act including the fines imposed against contraventions including penalties.

(3)The Sindh Sustainable Development Fund shall be utilized, in accordance with such procedures as may be prescribed for -

(a) providing financial assistance to projects designed for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, the sustainable development of resources and for research in any specified aspect of the environment; and

(b) any other purposes which, in the opinion of the Board, will help achieve environment objectives and the purposes of this Act.

Management of the Sindh Sustainable Development Fund.

9. (1)The Sindh Sustainable Development Fund shall be managed by a Board known as the Provincial Sustainable Development Fund Board consisting of—

(i)	Additional Chief Secretary, Planning and Development Department, Government of Sindh,	**Chairperson**
(ii)	Such officers of Government, not exceeding five (05), as Government may appoint including Secretaries of the Environment, Finance, Industries and Local Government Departments, Government of Sindh.	**Ex-officio Members**
(iii)	Such non-official persons, not exceeding five(05), as Government may appoint, including representatives of the Chambers of Commerce and Industry, non-governmental organizations and major donors.	**Non-official Members**
(iv)	Director General, Sindh Environmental Protection Agency.	**Secretary/ Member**

(2) The members of the Board, other than ex-officio members, shall be appointed in accordance with the prescribed procedure.

(3) A non-official member of the Board, unless he sooner resigns or is removed, shall hold office for a term of three years and shall be eligible for re-nomination, but shall not hold office for more than two terms.

(4) The Board shall frame its own rules of procedure with the approval of Government.

(5) In accordance with such procedures and such criteria as may be prescribed, the Board shall have the power to —

(a) sanction financial assistance for eligible projects;

(b) invest moneys held in the Sindh Sustainable Development Fund in such profit-bearing Government bonds, saving schemes and securities as it may deem suitable; and

(c) take such measures and exercise such powers as may be necessary for utilization of the Sindh Sustainable Development Fund for the purposes specified in sub-section (3) of section 8.

(6) The Board shall constitute committees of its members to undertake regular monitoring of projects financed from the Sindh Sustainable Development Fund and to submit progress reports to the Board which shall publish an Annual Report incorporating its annual audited accounts and performance evaluation based on the progress reports.

Accounts.

10. (1) The Agency shall maintain proper accounts of the Sindh Sustainable Development Fund and other relevant records and prepare annual statement of accounts in such form as may be prescribed.

(2) The accounts of the Sindh Sustainable Development Fund shall be audited annually by the Auditor General of Pakistan.

PART-V
PROHIBITIONS AND ENFORCEMENT

Prohibition of certain discharges or emissions and compliance with standards.

11. (1) Subject to the provisions of this Act and the rules and regulations, no person shall discharge or emit or allow the discharge or emission of any effluent, waste, pollutant, noise or any other matter that may cause or likely to cause pollution or adverse environmental effects, as defined in section 2 of this Act, in an amount, concentration or level which is in excess to that specified in Sindh Environmental Quality Standards; or, where applicable, the standards established under Section 6(1)(g)(i); or direction issued under Section 17, 19, 20 and 21 of this Act; or any other direction issued, in general or particular, by the Agency.

(2) All persons, in industrial or commercial or other operations, shall ensure compliance with the Environmental Quality Standards for ambient air, drinking water, noise or any other Standards established under section 6(1)(g)(i); shall maintain monitoring records for such compliances; shall make available these records to the authorized person for inspection; and shall report or communicate the record to the Agency as required under any directions issued, notified or required under any rules and regulations.

(3) Monitoring and analysis under sub-section (1) and (2), shall be acceptable only when carried out by the Environmental Laboratory certified by the Agency as prescribed in the rules.

Prohibition of import of hazardous waste.

12. No person shall import hazardous waste into Sindh province or its coastal, internal, territorial or historical waters, except acquiring prior approval of the Agency.

Handling of hazardous substances.

13. Subject to the provisions of this Act, no person shall import, generate, collect, consign, transport, treat, dispose of, store, handle or otherwise use or deal with any hazardous substance except-

(a) under a licence issued by the Agency; or

(b) in accordance with the provisions of any other law, rule, regulation or notification for the time being in force, or of any international treaty, convention, protocol, code, standard, agreement or other instrument to which Government is a party.

Prohibition of action adversely affecting Environment.

14. (1) Subject to the provisions of this Act and the rules and regulations, no person shall cause any act, deed or any activity, including-

(a) recycling or reuse of hospital waste and infectious waste;

(b) disposal of solid and hazardous wastes at unauthorized places as prescribed;

(c) dumping of wastes or hazardous substances into coastal waters and inland water bodies;

(d) release of emissions or discharges from industrial or commercial operations as prescribed;

(e) recycling or reuse or recovery of hazardous wastes or industrial by-products in an unauthorized or non-prescribed manner or procedure; and

(f) any activity which may cause adverse environmental affect due to trans boundary projects of Province of Sindh.

which lead to pollution or impairment of or damage to biodiversity, ecosystem, aesthetics or any damage to environment and natural resources as defined in section 2 (xxxvi) of this Act.

(2) No person shall generate, handle, transport, dispose of or handle the hospital waste and infections waste except in accordance with the Hospital Waste Management Rules and in such manner as may be prescribed.

(3) No person shall import, manufacture, stockpile, trade, supply, distribute or sell any scheduled plastic product which is non-degradable. The scheduled plastic products must be oxo-biodegradable and the pro-degradant used must be approved by the Agency or any other department or agency and in such manner as prescribed.

Regulation of motor vehicles.

15. (1) Subject to the provisions of this Act, no person shall operate or manufacture a motor vehicle or class of vehicles from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the Sindh Environmental Quality Standards or, where applicable, the standards established under sub-clause (i) of clause (g) of sub-section (1) of section 6.

(2) For ensuring compliance with the standards mentioned in sub-section (1), the Agency may direct that any motor vehicle or class of vehicles shall install such pollution control devices or other equipment or use such fuels or undergo such maintenance or testing as prescribed.

(3) For ensuring compliance with the standards mentioned in sub-section (1), the Agency may direct that any manufacturer of motor vehicle or class of vehicles shall use such manufacturing standard or design or pollution control devices or other equipment or undergo such testing as may be prescribed.

(4) Where a direction has been issued by the Agency under sub-section (2) and (3) in respect of any motor vehicles or class of motor vehicles, no person shall operate or manufacture any such vehicle till such direction has been complied with.

Certified Environmental Laboratory.

16. (1) The monitoring, testing and analysis carried out in compliance or for the enforcement of any provisions of this Act

(2) The laboratory or organization having any facility for environmental monitoring, testing and analysis and intend to perform under sub-section (1) shall register with the Agency in accordance with the Environmental Laboratory Certification Rules as prescribed.

PART-VI

ENVIRONMENTAL EXAMINATIONS AND ASSESSMENTS

Initial environmental examination and environmental impact assessment.

17. (1) No proponent of a project shall commence construction or operation unless he has filed with the Agency an initial environmental examination or environmental impact assessment, and has obtained from the Agency approval in respect thereof.

(2) The Agency shall –

(a) review the initial environmental examination and accord its approval, subject to such terms and conditions as it may prescribe, or require submission of an environmental impact assessment by the proponent; or

(b) review the environmental impact assessment and accord its approval subject to such terms and conditions as it may deem fit to impose or require that the environmental impact assessment be re-submitted after such modifications as may be stipulated or decline approval of the environmental impact assessment as being contrary to environmental objectives.

(3) Every review of an environment impact assessment shall be carried out with public participation and, subject to the provisions of this Act, after full disclosure of the particulars of the project.

(4) The Agency shall communicate its approval or otherwise within a period of two months from the date that the initial environmental examination is filed, and within a period of four months from the date that the environmental impact assessment is filed complete in all respects in accordance with the regulations, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules and regulations:

(5) The provisions of sub-sections (1), (2), (3) and (4) shall apply to such categories of projects and in such manner as prescribed:

(6) The Agency shall maintain separate registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open for inspection to the public during office hours.

Strategic environmental assessment.

18. (1) All provincial government agencies, departments authorities, local councils and local authorities responsible for formulating policies, legislation, plans and programmes to be implemented in Sindh province which may cause any environmental impact in the jurisdiction of the province shall, before submitting the same to the competent authority for approval, forward to the Sindh Environmental Protection Agency a strategic environment assessment containing —

(a) description of the objectives and features of the proposed policy, legislation, plan or programme that are in consonance with the principles of sustainable development;

(b) assessment of the adverse environmental effects, if any, likely to be caused during implementation of the policy, legislation, plan or programme alongwith proposed preventive, mitigation and compensatory measures;

(c) analysis of possible alternatives; and

(d) identification of those components of the policy, legislation, plan or programme, if any, in respect of which specific environmental impact assessment need to be carried out in due course.

(2) The Agency shall, in consultation with the concerned Government Agencies and Advisory Committees where established, review the strategic environment assessment, within sixty (60) days of its filing, and prepare a report containing its comments and recommendations in respect thereof which shall be forwarded to the initiating Government Agency, authority, local council or local authority and duly considered by it and the competent authority before approval or otherwise of the proposed policy, legislation, plan or programme.

(3) The provisions of sub-sections (1), and (2) shall apply to such categories of policies, plans and programmes and in such manner as may be prescribed.

Environmental monitoring.

19. (1) The Agency shall carry out or arrange environmental monitoring of all projects in respect of which it has approved an initial environmental examination or environmental impact assessment to determine whether the actual environmental impact exceeds the level predicted in the assessment and whether the conditions of the approval are being complied with.

(2) For purposes of sub-section (1), the Agency may require the person in charge of a project to furnish such information as it may specify pertaining to the environmental impact of the project, including quantitative and qualitative analysis of -

(a) discharge of effluents, wastes, emissions of air pollutants, noise and any other matter or action that may be found offensive under section 14 from the project on daily, weekly, monthly or annual basis;

(b) ambient quality of the air, water, noise and soil before, during and after construction and during operation of the project.

(3) On review of the data collected by it and information provided, the Agency may issue such directions to the person in charge as it may consider necessary to ensure compliance with the conditions of the approval.

Environmental Audit and Review.

20. (1) The Agency shall from time to time require the person in charge of a project to furnish, within such period as may be specified, an environmental audit or environmental review report or environmental management plan containing a comprehensive appraisal of the environmental aspects of the project.

(2) The report of a project prepared under sub-section (1) shall include -

(a) analysis of the predicted qualitative and quantitative impact of the project as compared to the actual impact;

(b) evaluation of the efficacy of the preventive, mitigation and compensatory measures taken with respect to the project; and

(c) recommendations for further minimizing or mitigating the adverse environmental impact of the project.

(3) Based on its review of the environmental audit report, the Agency may, after giving the person in charge of the project an opportunity of being heard, direct that specified mitigation and compensatory measures be adopted within a specified time period and may also, where necessary, modify the approval granted by it under section 17.

PART-VII
ENVIRONMENTAL PROTECTION ORDER

Environmental Protection Order.

21. (1) Where the Agency is satisfied that the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substances, or any other act or omission is likely to occur, or is occurring, or has occurred, in violation of any provision of this Act, the rules or regulations or of the conditions of a licence, or is likely to cause, or is causing or has caused an adverse environmental effect, the Agency may, after giving the person responsible for such

discharge, emission, disposal, handling, act or omission an opportunity of being heard, by order direct such person to take such measures as the Agency may consider necessary within such period as may be specified in the order.

(2) In particular and without prejudice to the generality of the foregoing power, such measures may include —

(a) immediate stoppage, preventing, lessening or controlling the discharge, emission, disposal, handling, act or omission, or to minimize or remedy the adverse environmental effect;

(b) installation, replacement or alteration of any equipment or thing to eliminate, control or abate on a permanent or temporary basis, such discharge, emission, disposal, handling, act or omission;

(c) action to remove or otherwise dispose of the effluent, waste, air pollutant, noise, or hazardous substances;

(d) action to restore the environment to the condition existing prior to such discharge, disposal, handling, act or omission, or as close to such condition as may be reasonable in the circumstances, to the satisfaction of the Agency; and

(e) impose a penalty as prescribed.

(3) Notwithstanding the provisions of sub-section (1), in an emergency situation where, for reasons to be recorded, the Agency is satisfied that the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substances, or any other act or omission is likely to occur, or is occurring, or has occurred, in violation of the provisions of this Act and that circumstances of the case warrant immediate action in the public interest, it may pass an ad-interim order of the nature described in sub-sections (1) and (2) by providing reasonable opportunity of hearing.

PART-VIII
OFFENCES AND PENALTIES

Penalties.

22. (1) Whoever contravenes or fails to comply with the provisions of sections 11, 17, 18 and 21 or any order issued there under shall be punishable with a fine which may extend to five million rupees, to the damage caused to environment and in the case of a continuing contravention or failure, with an additional fine which may extend to one hundred thousand rupees for every day during which such contravention or failure continues:

Provided that if the contravention of the provisions of section 11 also constitutes a contravention of the provisions of section 15, such contravention shall be punishable under sub-section (2).

(2) Whoever contravenes or fails to comply with the provisions of sections 13, 14, 15 and 16 or any rule or regulation or conditions of any license, any order or direction, issued by the Agency, shall be punished with a fine, and in case of continuing contravention or failure with an additional fine which may extend to ten thousand rupees for every day during which such contravention continues.

(3) Where an accused has been convicted of an offence under sub-sections (1) and (2), the Environmental Protection Tribunal and Court shall, as the case may be, in passing sentence, take into account the extent and duration of the contravention or failure constituting the offence and the attendant circumstances.

(4) Where an accused has been convicted of an offence under sub-sections (1) or (2), the Environmental Protection Tribunal or Court, as the case may be, shall endorse a copy of the order of conviction to the concerned trade or industrial association, if any, or the concerned Provincial Chamber of Commerce and Industry or the Federation of Pakistan Chambers of Commerce and Industry.

(5) Where a person convicted under sub-sections (1) and (2) had been previously convicted for any contravention of this Act and its rules or regulations, the Environmental Protection Tribunal, as the case may be, may, in addition to the punishment awarded thereunder-

(a) sentence him to imprisonment for a term that may extend up to three years;

(b) order the closure of the factory;

(c) order confiscation of the facility, machinery and equipment, vehicle or substance, record, document or other object used or involved in contravention of the provisions of this Act;

(d) order such person to restore the environment at his own cost, to conditions existing prior to the contravention or as close to such conditions as may be reasonable in the circumstances to the satisfaction of the Agency; and

(e) order that compensation be paid to any person or persons for any loss, or damage to their health or property suffered by such contravention.

(6) The Director General or an officer generally or specially authorised by him in this behalf may, on the application of the accused, compound an offence under this Act with the permission of the Environmental Protection Tribunal or Court in accordance with such procedure as prescribed.

(7) Where the Director General is of the opinion that a person had contravened any provision of this Act, he may, subject to the rules, by notice in writing to that person require him to pay to the Agency a penalty in the amount set out in the notice for each day the contravention continues.

Offences by body corporate.

23. Where any contravention of this Act has been committed by a body corporate, and it is proved that such offence has been committed with the consent or connivance of, or is attributed to any negligence on the part of, any director, partner, manager, secretary or other officer of the body corporate, such director, partner, manager, secretary or other officer of the body corporate, shall be deemed guilty of such contravention along with the body corporate and shall be punished accordingly:

Provided that in the case of a company as defined under the Companies Ordinance, 1984 (XLVII of 1984), only the Chief Executive as defined in the said Ordinance shall be liable under this section.

Explanation.— For the purposes of this Section, "body corporate" includes a firm, association of persons and a society registered under the Societies Registration Act, 1860 (XXI of 1860), or under the Co-operative Societies Act, 1925 (VII of 1925).

Offences by Government Agencies, local authorities or local councils.

24. Where any contravention of this Act has been committed by any Government Agency, local authority or local council, and it is proved that such contravention has been committed with the consent or connivance of, or is attributable to any negligence on the part of, the Head or any other officer of Government Agency, local authority or local council, such Head or other officer shall also be deemed guilty of such contravention along with the Government Agency, local authority or local council and shall be liable to be proceeded against and punished accordingly.

PART-IX
ENVIRONMENTAL PROTECTION TRIBUNALS AND COURTS

Environmental Protection Tribunals.

25. (1) Government may, by Notification in the Official Gazette, establish as many Environmental Protection Tribunals as it considers necessary and, where it establishes more than one Environmental Protection Tribunal, it shall specify territorial limits within which, or the class of cases in respect of which, each one of them shall exercise jurisdiction under this Act.

(2) An Environmental Protection Tribunal shall consist of a Chairperson who is, or has been, or is qualified for appointment as a Judge of the High Court to be appointed after consultation with the Chief Justice of the High Court and two members to be appointed by Government, of which at least one shall be a technical member nominated from amongst the officers of the Agency with suitable professional qualifications and experience in the environmental field.

(3) For every sitting of the Environmental Protection Tribunal, the presence of the Chairperson and not less than one Member shall be necessary.

(4) A decision of an Environmental Protection Tribunal shall be expressed in terms of the opinion of the majority of its members, including the Chairperson, or if the case has been decided by the Chairperson and only one of the members and there is a difference of opinion between them, the decision of the Environmental Protection Tribunal shall be expressed in terms of the opinion of the Chairperson.

(5) An Environmental Protection Tribunal shall not, merely by reason of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded by, or produced, before it.

(6) An Environmental Protection Tribunal may hold its sittings at such places within its territorial jurisdiction as the Chairperson may decide.

(7) No act or proceeding of an Environmental Protection Tribunal shall be invalid by reason only of the existence of a vacancy in, or defect in the constitution, of, the Environmental Protection Tribunal.

(8) The terms and conditions of service of the Chairperson and members of the Environmental Protection Tribunal shall be such as may be prescribed.

Jurisdiction and powers of Environmental Protection Tribunals.

26. (1) An Environmental Protection Tribunal shall exercise such powers and perform such functions as are, or may be, conferred upon or assigned to it by or under this Act or the rules and regulations.

(2) All contraventions punishable under sub-section (1) of section 22 shall exclusively be triable by an Environmental Protection Tribunal.

(3) An Environmental Protection Tribunal shall not take cognizance of any offence triable under sub-section (2) except on a complaint in writing by—

(a) the Agency or any Government Agency or Local Council; and

(b) any aggrieved person, who has given notice of not less than thirty days to the Agency, of the alleged contravention and of his intention to make a complaint to the Environment Protection Tribunal.

(4) In exercise of its criminal jurisdiction, the Environmental Protection Tribunal shall have the same powers as are vested under the Code of Criminal Procedure, 1898 (Act V of 1898).

(5) In exercise of the appellate jurisdiction under section 27 the Environmental Protection Tribunal shall have the same powers and shall follow the same procedure as an appellate court in the Code of Civil Procedure, 1908 (Act V of 1908).

(6) In all matters with respect to which no procedure has been provided for in this Act, the Environmental Protection Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908).

(7) An Environmental Protection Tribunal may, on application filed by any officer duly authorised in this behalf by the Director General, issue bailable warrant for the arrest of any person against whom reasonable suspicion exists, of his having been involved in contravention punishable under sub-section (1) of section 22:

Provided that such warrant shall be applied for, issued and executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided further that if the person arrested executes a bond with sufficient sureties in accordance with the endorsement on the warrant he shall be released from custody, failing which he shall be taken or sent without delay to the officer in-charge of the nearest jurisdiction police station.

(8) All proceedings before the Environmental Protection Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and the Environmental Protection Tribunal shall be deemed to be a court for the purpose of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(9) No court other than an Environmental Protection Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of an Environmental Protection Tribunal extends under this Act and the rules and regulations.

(10) Where the Environmental Protection Tribunal is satisfied that a complaint made to it under sub-section (3) is false and vexatious to the knowledge of the complainant, it may, by an order, direct the complainant to pay to the person complained against such compensatory costs which may extend to one hundred thousand rupees.

Appeals to the Environmental Protection Tribunal.

27. (1) Any person aggrieved by any order or direction of the Agency under any provision of this Act or the rules or regulations may prefer an appeal with the Environmental Protection Tribunal within thirty days of the date of communication of the impugned order or direction to such person.

(2) An appeal to the Environmental Protection Tribunal shall be in such form, contain such particulars and be accompanied by such fees as prescribed.

Appeals from orders of the Environmental Protection Tribunal.

28. (1) Any person aggrieved by any final order or by any sentence of the Environmental Protection Tribunal passed under this Act may, within thirty days of communication of such order or sentence, prefer an appeal to the High Court.

(2) An appeal under sub-section (1) shall lie before the High Court of Sindh.

Jurisdiction of Judicial Magistrate.

29. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force, but subject to the provisions of this Act, all contraventions punishable under sub-section (2) of section 22 shall exclusively be triable by the Court of Judicial Magistrate of First Class having of First Class having jurisdiction.

(2) A Judicial Magistrate shall be competent to impose any punishment specified in sub-sections (2) and (4) of section 22.

(3) A Judicial Magistrate shall not take cognizance of an offence triable under sub-section (1) except on a complaint in writing by—

(a) the Agency; and

(b) any aggrieved person.

Appeals from orders of the Judicial Magistrate.

30. Any person aggrieved by any final order or sentence passed by a Judicial Magistrate under section 28 may, within thirty days from the date of the communication of such order or sentence, appeal to the Court of the District and Sessions Judge defined as Green Court under this Act, whose decision thereon shall be final.

PART-X
PUBLIC PARTICIPATION

Public participation.

31.(1)The Agency shall cause relevant details of any proposed project regarding which an Environmental Impact Assessment has been received to be published, alongwith an invitation to the public to furnish their comments thereon within a specified period.

(2) In accordance with such procedure as may be prescribed, the Agency shall hold public hearings to receive additional comments and hear oral submissions.

(3) All comments received under sub-sections (1) and (2) shall be duly considered by the Agency while reviewing the environmental impact assessment or strategic impact assessment, and decision or action taken thereon shall be communicated to the persons who have furnished the said comments.

PART-XI
GENERAL

Power to make and amend schedule.

32. The Agency may, by notification in the official Gazette, make and amend the schedule.

Indemnity

33. No suit, prosecution or other legal proceedings shall lie against Government, the Council, the Agency, the Director General of the Agency, members, officers, employees, experts, advisors, committees or consultants of the Agency or Environmental Protection Tribunal or Court or any other person for anything which is done or intended to be done in good faith under this Act or rules or regulations.

Dues recoverable as arrears of land revenue.

34. Any dues recoverable by the Agency under this Act and rules or regulations shall be recoverable as arrears of land revenue.

Act to override other laws.

35. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Power to make rules.

36. The Sindh Environment Protection Agency may, by notification in the Official Gazette, make rules for carrying out the purposes not in consistence of this Act with the approval of Government.

Power to make regulations.

37. (1) For carrying out the purposes of this Act, the Agency may, by Notification in the Official Gazette and with the approval of Government, make regulations not inconsistent with the provisions of this Act or the rules.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for —

(a) submission of periodical reports, data or information by any Government Agency, local authority or local council in respect of environmental matters;

(b) preparation of emergency contingency plans for coping with environmental hazards and pollution caused by accidents, natural disasters and calamities;

(c) appointment of officers, advisors, experts, consultants and employees **as per prescribed rules**;

(d) levy of fees, rates and charges in respect of services rendered, actions taken and schemes implemented;

(e) monitoring and measurement of discharges and emissions;

(f) categorization of projects to which, and the manner in which sections 17, 18 and 20 applies;

(g) laying down of guidelines for preparation of initial environmental examination, environmental impact assessment and strategic environmental assessment, and development of procedures of their filing, reviews and approval.

(h) laying down standard operating procedures for environmental sampling, examination of water, waste water, gaseous emissions, solid waste and noise;

(i) providing procedures for handling hazardous substances; and

(j) installation of devices in, use of fuels by, and maintenance and testing of motor vehicles for control of air and noise pollution.

BY ORDER OF THE SPEAKER
PROVINCIAL ASSEMBLY OF SINDH

G.M.UMAR FAROOQ
SECRETARY
PROVINCIAL ASSEMBLY OF SINDH

Karachi: Printed at the Sindh Government Press
20-3-2014

Punjab Environmental Protection Act 1997

[1]THE PUNJAB ENVIRONMENTAL PROTECTION

An Act to provide for the protection, conservation, rehabilitation and improvement of the e prevention and control of pollution, and promotion of sustainable developm

WHEREAS, it is expedient to provide for the protection, conservation, rehabilitation and environment, prevention and control of pollution, promotion of sustainable developme connected therewith and incidental thereto;

It is hereby enacted as follows:-

1. **Short title, extent and commencement**.– (1) This Act shall be called the [2][Pun Protection Act, 1997.

(2) It extends to the whole of [3][the Punjab].

(3) It shall come into force at once.

2. **Definitions**.– In this Act, unless there is anything repugnant in the subject or context,–

(i) "adverse environmental effect" means impairment of, or damage to, t includes–

(a) impairment of, or damage to, human health and safety or to biodiversity or

(b) pollution; and

(c) any adverse environmental effect as may be specified in the regulations;

(ii) "agriculture waste" means waste from farm and agricultural activities including p animal husbandry, residues from the use of fertilizers, pesticides and other farm che

(iii) "air pollutant" means any substance that causes pollution of air and includ particles, odor, light, electro-magnetic, radiation, heat, fumes, combustion exh noxious gases, hazardous substance and radioactive substances;

(iv) "biodiversity" or "biological diversity" means the variability among living organi including *inter alia* terrestrial, marine and other aquatic ecosystems and the eco which they are part; this includes diversity within species, between species and of

(v) "Council" means the [4][Punjab] Environmental Protection Council established

(vi) "discharge" means spilling, leaking, pumping, depositing, seeping, releasing, flowing emptying or dumping;

(vii) "ecosystem" means a dynamic complex of plant, animal and micro-organis their non-living environment interacting as a functional unit;

(viii) "effluent" means any material in solid, liquid or gaseous form or combination the from industrial activity or any other source and includes a slurry, suspension or vapour

(ix) "emission standards" means the permissible standards established by the [5] for emission of air pollutants and noise and for discharge of effluent and waste;

(x) "environment" means–

(a) air, water and land;

(b) all layers of the atmosphere;

(c) all organic and inorganic matter and living organisms;

(d) the ecosystem and ecological relationships;

(e) buildings, structures, roads, facilities and works;

(f) all social and economic conditions affecting community life; and

(g) the inter-relationships between any of the factors in sub-clauses (a) to (f);

(xi) "environmental impact assessment" means an environmental study comprisi

and monitoring arrangements, and framing of recommendations and such other co prescribed;

(xii) "Environmental Magistrate" means the Magistrate of the First Class appointed

(xiii) "Environmental Tribunal" means the Environmental Tribunal constituted unde

(xiv) [6][* * * * * * * * * * *];

(xv) "factory" means any premises in which industrial activity is being under taken

[7][(xvi) "Government" means Government of the Punjab;]

[8][(xvii) "Government Agency" includes–

(a) a department, an attached department or any other office of the Governme

(b) a development authority, local authority, company or a body corporate establ the Government;]

(xviii) "hazardous substance" means–

(a) a substance or mixture of substances, other than a pesticide as define Pesticides Ordinance, 1971 (II of 1971), which, by reason of its chemi explosive, flammable, corrosive, radioactive or other characteristics ca cause, directly or in combination with other matters, an adverse environm

(b) any substance which may be prescribed as a hazardous substance;

(xix) "hazardous waste" means waste which is or which contains a hazardous substa prescribed as hazardous substance or which may be prescribed as hazardous hospital waste and nuclear waste;

(xx) [9][* * * * * * * * * * *]

(xxi) "hospital waste" includes waste medical supplies and materials of all kin tissue, organs and other parts of the human and animal bodies, from ho laboratories;

(xxii) "industrial activity" means any operation or process for manufacturing, m synthesising, altering, repairing, ornamenting, finishing, packing or otherwise or substance with a view to its use, sale, transport, delivery or disposal, or fo gas exploration and development, or for pumping water or sewage, or for gene or transmitting power or for any other industrial or commercial purposes;

(xxiii) "industrial waste" means waste resulting from an industrial activity;

(xxiv) "initial environmental examination" means a preliminary environmental revie foreseeable qualitative and quantitative impacts on the environment of a

determine whether it is likely to cause an adverse environmental effect for req an environmental impact assessment;

(xxv) ”local authority” means any agency set up or designated by the [10][Govern in the official Gazette to be a local authority for the purposes of this Act;

(xxvi) “local council” means a local council constituted or established under a l government;

(xxvii) “motor vehicle” means any mechanically propelled vehicle adapted for use u power of propulsion is transmitted thereto from an external or internal source, and which a body has not been attached, and a trailer, but does not include a vehicl rails;

(xxviii) “municipal waste” includes sewage, refuse, garbage, waste form abattoirs excreta and the like;

(xxix) [11][* * * * * * * * * * * *]

(xxx) “noise” means the intensity, duration and character of sounds from all s vibration;

(xxxi) “nuclear waste” means waste from any nuclear reactor or nuclear plant or system, whether or not such waste is radioactive;

governmental organization, community-based organization, village organization, authority and, in the case of a vessel, the master or other person having for the tim control of the vessel;

(xxxiii) "pollution" means the contamination of air, land or water by the discharge or e or wastes or air pollutants or noise or other matter which either directly combination with other discharges or substances alters unfavourably the biological, radiational, thermal or radiological or aesthetic properties of the which may, or is likely to make the air, land or water unclean, noxious or disagreeable or detrimental to the health, safety, welfare or property of pe biodiversity;

[12]

[(xxxiv) "prescribed" means prescribed by the rules or regulations;]

(xxxv) "project" means any activity, plan, scheme, proposal or undertaking involv environment and includes–

(a) construction by use of buildings or other works;
(b) construction or use of roads or other transport systems;
(c) construction or operation of factories or other installations:
(d) mineral prospecting, mining, quarrying, stone-crushing, drilling and the li
(e) any change of land use or water use; and
(f) alteration, expansion, repair, decommissioning or abandonment of existi works, roads or other transport systems, factories or other installations;

(xxxvi) "proponent" means the person who proposes or intends to undertake a project;

[13]

[(xxxvii) "Provincial Agency" means the Provincial Environmental Protection Agency Act, or any Government Agency, local council or local authority exercising the of the Provincial Agency;]

[14]

[(xxxvii-a) "Punjab Environmental Quality Standards" mean the standards prepare Agency and approved by the Council;]

(xxxviii) "regulations" means regulations made under the Act;

(xxxix) "rules" means rules made under this Act;

(xl) "sewage' means liquid or semi-solid wastes and sludge from sanitary convenienc washing and similar activities and from any sewerage system or sewage disposal works

(xli) "standards' means qualitative and quantitative standards for discharge of efflue emission of air pollutants

and noise either for general applicability or for a particular ar production process, or for a particular product, and includes the [15]
Standards, emission standards and other standards established under this Act and the made there under;

(xlii) "sustainable development" means development that meets the needs of th without compromising the ability of future generations to meet their needs;

(xliii) [16] [* * * * * * * * * * * *]

(xliv) "vessel" includes anything made for the conveyance by water of human being

(xix) "waste" means any substance or object which has been, is being or is intende disposed of, and includes liquid waste, solid waste, waste gases, suspended wa agricultural waste, nuclear waste, municipal waste, hospital waste, used pol residues from the incineration of all types of waste.

3. Establishment of the [17] [Punjab] Environmental Protection [18] Council.– [(1) The G

notification in the official Gazette, establish a Council to be known as the Punjab Envir Council consisting of–

(i) Chief Minister of the Punjab; or such other person as nominated by the Chief Minister; Chairperson

(iii) such other persons not exceeding thirty five as the Government may appoint, of which at least twenty five shall be non-official including at least three Members of the Provincial Assembly of the Punjab, five representatives of the Chambers of Commerce and Industry and one or more representatives of the Chambers of Agriculture, Medical and legal profession, trade unions and non- governmental organizations concerned with the environment and sustainable development, and scientists, technical experts and educationalists [:] Members

[19]

[20]

[Provided that at least one female member of the Assembly and at least four women shall be appointed as non-official members; and]

(iv) Secretary to the Government, Environment Protection Department. Member/Sec

(2) The Members of the Council, other than *ex-officio* members, shall be appointed in prescribed procedure and shall hold office for a term of three years.

(3) The Council shall frame its own rules of procedure.

(4) The Council shall hold meetings as and when necessary, but not less than two meetin year.

(5) The Council may constitute committees of its members and entrust them with such deem fit, and the recommendations of the committees shall be submitted to the Council for a

(6) The Council or any of its committees may invite any technical expert or re Government Agency or non-governmental organization or other person possessing specialize subject for assistance in performance of its functions.

4. **Functions and powers of the Council**.– (1) The Council shall–

(a) co-ordinate and supervise enforcement of the provisions of this Act;

(b) approve comprehensive national environmental policies and ensure their implementation of a national conservation strategy as may be approved by the [21][Government] from time

(c) approve the [22][Punjab] Environmental Quality Standards;
(d) provide guidelines for the protection and conservation of species, habitats, and bio and for the conservation of renewable and non-renewable resources;
(e) coordinate integration of the principles and concerns of sustainable develo development plans and policies; and
(f) consider the [23][Punjab] Environment Report and give appropriate directions thereon

(2) The Council may, either itself or on the request of any person or organisation, dire Agency] or any Government Agency to prepare, submit, promote or implement projects conservation, rehabilitation and improvement of the environment, the prevention and cont the sustainable development of resources, or to undertake research in any specified aspect of

5. **Establishment of the [25][Provincial] Environmental Protection Agency**.– [26][(shall, by notification in the official Gazette, establish the Provincial Environmental Pr exercise the powers and perform the functions assigned to it under this Act, the rules and the

(2) The [27][Provincial Agency] shall be headed by a Director General, who shall be a [Government] on such terms and conditions as it may determine.

(3) The [29][Provincial Agency] shall have such administrative, technical and le [Government] may specify, to be appointed in accordance with such procedure as may be pre

(4) The powers and functions of the [31][Provincial Agency] shall b exercised an Director-General.

[32][(5) The Director General may, by general or special order, delegate any of Provincial Agency exercised by him under subsection (4) to any other officer appointed unde

the relevant sector, educational institutions, research institutes and non-governmental organiz

6. Functions of the [35] [Provincial Agency].– (1) The [36] [Provincial Agency] shall–

(a) administer and implement the provisions of this Act and the rules and regulations m

(b) prepare, in coordination with the appropriate Government Agency and in consultatio sectoral Advisory Committees, [37] [* * *] environmental policies for approval by the Co

(c) take all necessary measures for the implementation of the [*** Provincial] environment [38] by the Council;

(d) prepare and publish an annual [39] [Punjab] Environment Report on the state of the e

(e) prepare or revise, and establish the [40] [Punjab] Environmental Quality Standards Council:

Provided that before seeking approval of the [Provincial Agen proposed Council, the [41] [42] [Punjab] Environmental Quality Standards for public opinion in a prescribed procedure;

(f) ensure enforcement of the [43] [Punjab] Environmental Quality Standards;

[44]

[(g) establish standards for the quality of the ambient air, water and land, by notifi Gazette;]

(h) co-ordinate environmental policies and programmes nationally and internationally;

(i) establish systems and procedures for surveys, surveillance, monitoring, measur investigation, research, inspection and audit to prevent and control pollution, and t of cleaning up pollution and rehabilitating the environment in various sectors;

(j) take measures to promote research and the development of science and technology wh the prevention of pollution, protection of the environment, and sustainable developmen

(k) certify one or more laboratories as approved laboratories for conducting tests and anal research institutes as

environmental research institutes for conducting research and purposes of this Act;

(l) identify the needs for, and initiate legislation in various sectors of the environment;

(m) render advice and assistance in environmental matters, including such informatio with it as may be required for carrying out the purposes of this Act:

Provided that the disclosure of such information shall be subject to the restricti proviso to sub-section (3) of section 12;

(n) assist the local councils, local authorities, Government Agencies and other pe schemes for the proper disposal of wastes so as to ensure compliance established by it;

(o) provide information and guidance to the public environmental matters;

(p) recommend environmental courses, topics, literature and books for incorporation in the of educational institutions;

(q) promote public education and awareness of environmental issues through mass media and seminars and workshops;

(r) specify safeguards for the prevention of accidents and disasters which may cause pollu the concerned person in the preparation of contingency plans for control of such accide co-ordinate implementation of such plans;

(s) encourage the formation and working of non-governmental organizations, commun village organizations to prevent and control pollution and promote sustainable develop

(t) take or cause to be taken all necessary measure for the protection, conservatio improvement of the environment, prevention and control of pollution and prom development; and

(a) undertake inquires or investigation into environmental issues, either of its complaint from any person or organisation;

(b) request any person to furnish any information or data relevant to its functions;

(c) initiate with the approval of the [46] [Government], requests for foreign assistán purposes of this Act and enter into arrangements with foreign agencies or o exchange of material or information and participate in international seminars or m

(d) recommend to the [47] [Government] the adoption of financial and fiscal programmes, for achieving environmental objectives and goals and the purposes of this Act, including

(i) incentives, prizes awards, subsidies, tax exemptions, rebates and depreciati

(ii) taxes, duties, cesses and other levies;

(e) establish and maintain laboratories to help in the performance of its functions under th research in various aspects of the environment and provide or arrange necessary assista of similar laboratories in the private sector; and

(f) provide or arrange, in accordance with such procedure as may be prescribed, fin projects designed to facilitate the discharge of its functions.

7. Powers of the [48] [49] **[Provincial Agency]**.– Subject to the provisions of this Act, the

may–

(a) lease, purchase, acquire, own, hold, improve, use or otherwise deal in and wit movable and immovable;

(b) sell, convey, mortgage, pledge, exchange or otherwise dispose of its property and ass

(c) fix and realize fees, rates and charges for rendering any service or providing any fa data under this Act or the rules and regulations made thereunder;

(d) enter into the contracts, execute instruments, incur liabilities and do all acts or things management and conduct of its business;

(e) appoint with the approval of the [50] [Government] and in accordance with such p prescribed, such advisers, experts and consultants as it

considers necessary for the efficie functions on such terms and conditions as it may deem fit;

(f) summon and enforce the attendance of any person and require him to supply document needed for the conduct of any enquiry or investigation into any environme

(g) enter and inspect and under the authority of a search warrant issued by the Enviro Environmental Magistrate, search at any reasonable time, any land, building, premises other place where or in which, there are reasonable grounds to believe that an offence un or is being committed;

(h) take samples of any materials, products, articles or substances or of the effluents, wa being discharged or emitted or of air, water or land in the vicinity of the discharge or

(i) arrange for test and analysis of the samples at a certified laboratory;

(j) confiscate any article used in the commission of the offence where the offender is not found within a reasonable time:

Provided that the power under clauses (f), (h), (i) and (j) shall be exercised in provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or the rules and under the direction of the Environmental Tribunal or Environmental Magistrate;

[51]

[(k) establish the Punjab Environmental Coordination Committee comprising the Director G

and such other members as the Government may appoint to exercise such powers and perf may be delegated or assigned to it by the Government for carrying out the purposes of this

8.

[52]

[* * * * * * * * * * * * *]

[53]

(2) The Provincial Sustainable Development Fund shall be derived from the following s

(a) grants made or loans advanced by the [54] [Government of the Federal Governme

(b) aid and assistance, grants, advances, donations and other non-obligatory funds r governments, national or international agencies, and non-governmental organizations

(c) contributions from private organizations, and other persons.

(3) The Provincial Sustainable Development Fund shall be utilized in accordance wit may be prescribed for–

(a) providing financial assistance to the projects designed for the protection, conser and improvement of the environment, the prevention and control of polluti development of resources and for research in any specified aspect of environment

(b) any other purpose which in the opinion of the Board will help achieve environm the purposes of this Act.

10. Management of the Provincial Sustainable Development Fund.– [55] [(1) The Pr Development Fund shall be managed by a Board known as the Provincial Sustainable Deve consisting of–

(i)	Chairman, Planning and Development Board;	Chairperso
(ii)	Such officers of the Government, not exceeding six, as the Government may appoint including Secretaries incharge of the Finance, Industries and Environment Departments;	Members
(iii)	such non-official persons not exceeding ten as the Government may appoint including representatives of the Chamber of Commerce and Industry, non- governmental organizations and major donors; and	Members
(iv)	Director General of the Provincial Agency.	Member/Se

(2) In accordance with such procedure and such criteria as may be prescribed, the B power to–

(a) sanction financial assistance for eligible projects;

(b) invest moneys held in the Provincial Sustainable Development Fund in government bonds, savings schemes and securities as it may deem suitable; and

(c) take such measures and exercise such powers as may be necessary for utilizat Sustainable Development fund

for the purposes specified in sub-section (3) of sectio

(3) The Board shall constitute committees of its members to undertake regular mo financed from the Provincial Sustainable Development Fund and to submit progress reports shall publish an Annual Report incorporating its annual audited accounts, and performance the progress reports.

11. **Prohibition of certain discharges or emissions**.– (1) Subject to the provisions of this A regulations made there under no person shall discharge or emit or allow the discharge or emi

or waste or air pollutant or noise in an amount, concentration or level which is in excess Environmental Quality Standards or, where applicable, the standards established under [57 sub-section (1) of section 6.

(2) The [58] [Government] may levy a pollution charge on any person who contravene with the provisions of sub-section (1), to be calculated at such rate, and collected in ac procedure as may be prescribed.

(3) Any person who pays the pollution charge levied under sub-section (2) shall not offence with respect to that contravention or failure.

(4) The provision of sub-section (3) shall not apply to projects, which commenced ind after the thirtieth day of June, 1994.

12. **Initial environmental examination and environmental impact assessment**.– (1) project shall commence construction or operation unless he has filed with the [59][Provinci

environmental impact assessment, and has obtained from the [60][Provincial Agency] thereof.

(2) The [61][Provincial Agency] shall–

(a) review the initial environmental examination and accord its approval, or requ environmental impact assessment by the proponent; or

(b) review the environmental impact assessment and accord its approval subject to may deem fit to impose, or require that the environmental impact assessment b such modifications as may be stipulated, or reject the project as being contra objectives.

(3) Every review of an environmental impact assessment shall be carried out with pub no information will be disclosed during the course of such public participation which relates

(i) trade, manufacturing or business activities, processes or techniques of a proprieta commercial, scientific or technical matters which the proponent has requested [Provin shoul unless for reasons to be recorded in writing, the Director - General of the [62] opinion that the request for confidentiality is not well-founded or the public inte outweighs the possible prejudice to the competitive position of the project or its propon

(ii) International relations, national security or maintenance of law and order, except w [63][Government]; or

(iii) matters covered by legal professional privilege.

(4) The [64][Provincial Agency] shall communicate its approval or otherwise within a p from the date the initial environmental examination or environmental impact assessment is respects in accordance with the prescribed procedure, failing which the initial environmenta the case may be, the environmental impact assessment shall be deemed to have been appro which it does not contravene the provisions of this Act and the rules and regulations made th

(5) Subject to sub-section (4) the [65][Government] may in a particular case extend period of four months if the nature of the project so warrants.

(6) The provisions of sub-sections (1), (2), (3), (4) and (5) shall apply to such categori such manner as may be prescribed.

(7) The [66][Provincial Agency] shall maintain separate Registers for initial environme environmental impact assessment project, which shall contain brief particulars of each proje

decisions taken thereon, and which shall be open to inspection by the public at all reaso disclosure of information in such Registers shall be subject to the restrictions specified in sub-s

[67][13. **Prohibition of import of hazardous waste**.– No person shall import hazardous was

14. **Handling of hazardous substances**.– Subject to the provisions of this Act, no person sh consign, transport, treat, dispose of, store, handle or import any hazardous substance except–

(a) under a licence issued by the [68][Provincial Agency] and in such manner as may be

(b) in accordance with the provisions of any other law for the time being in force, or of an convention, protocol, code, standard, agreement or other instrument to which Pakistan is

15. **Regulation of motor vehicles**.– (1) Subject to the provisions of this Act and the rules a thereunder, no person shall operate a motor vehicle from which air pollutants or noise are amount, concentration or level which is in excess of the [69][Punjab] Environmental Quality applicable the standards established under clause (g) of sub-section (1) of section 6.

(2) For ensuring compliance with the standards mentioned in sub-section (1), the [70][Prov direct that any motor vehicle or class of vehicles shall install such pollution control devices or ot

(3) Where a direction has been issued by the [71] [Provincial Agency] under sub-section motor vehicles or class of motor vehicles, no person shall operate any such vehicle till suc complied with.

16. Environmental protection order.– [72]

[(1) Where the Provincial Agency is satisfied t emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or handling of or any other act or omission is likely to occur, or is occurring, or has occurred, in violation of Act, rules or regulations or of the conditions of a license, or is likely to cause, or is causin adverse environmental effect, the Provincial Agency may, after giving the person responsibl emission, disposal, handling, act or omission an opportunity of being heard, by order, direct such measures as the Provincial Agency may consider necessary within such period as ma order.]

(2) In particular and without prejudice to the generality of the foregoing power, such me

(a) immediate stoppage, preventing, lessening or controlling the discharge, emission act or omission, or to minimize or remedy the adverse environmental effect;

(b) installation, replacement or alteration of any equipment or thing to eliminate or permanent or temporary basis, such discharge, emission, disposal, handling, act or o

(c) action to remove or otherwise dispose of the effluent, waste, air pollutant, substances; and

(d) action to restore the environment to the condition existing prior to such discharge act or omission, or as close to such condition as may be reasonable in the c

satisfaction of the [73] [Provincial Agency].

(3) Where the person, to whom directions under sub-section (1) are given, does not comp [Provincial Agency] may, in addition to the proceeding initiated against him under this A regulations, itself take or cause to be taken such measures specified in the order as it may deem recover the costs of taking such measures from such person as arrears of land revenue.

17. Penalties.– (1) Whoever contravenes or fails to comply with the provisions of sections 11, 12, 1

[75]

order issued thereunder shall be punishable with fine which may extend to [five million] rupee

continuing contravention or failure, with an additional fine which may extend to one hundred thousan during which such contravention or

failure continues and where such contravention or failure continues
Provided that if contravention of the provision of section 11 also
constitutes contraventi
of section 15, such contravention shall be punishable under sub-section (2) only.

(2) Whoever contravenes or fails to comply with the provisions of section 14 or 15 or a or conditions of any licence, any order or direction issued by the Council or by the [76][Prov be punishable with fine which may extend to [77][five hundred thousand] rupees, and in contravention, or failure with an additional fine which may extend to one thousand rupees f which such contravention continues.

(3) Where an accused has been convicted of an offence under sub-section (1) and (2), the En and Environmental Magistrate shall, in passing sentence, take into account the extent and duratio or failure constituting the offence, and the attendant circumstances.

(4) Where an accused has been convicted of an offence under sub-section (1) and Tribunal is satisfied that as a result of the commission of the offence monetary benefits offender, the Environmental Tribunal may order the offender to pay, in addition to the fin (1), further additional fine commensurate with the amount of the monetary benefits.

(5) Where a person convicted under sub-sections (1) or sub-section (2); and had been for any contravention under this act, the Environmental Tribunal or, as the case may Magistrate may, in addition to the punishment awarded thereunder–

(a) endorse a copy of the order of conviction to the concerned trade or industrial a

(b) sentence him to imprisonment for a term which may extend up to two years;

(c) order the closure of the factory;

(d) order confiscation of the factory, machinery, and equipment, vehicle, material or document or other object used or involved in contravention of the provisions of the A

Provided that for a period of three years from the date of commencement of t of imprisonment shall be passed only in respect of persons who have been pre more than once for any contravention of section 11, 13,14 or 16 involving hazard

(e) order such person to restore the environment at his own cost, to the conditions e contravention or as close to such conditions as may be reasonable in the c satisfaction of the [78] [Provincial Agency]; and

(f) order that such sum be paid to any person as compensation for any loss, bodily i health or property suffered by such contravention.

(6) The Director-General of the [79] [Provincial Agency] or an officer generally or spe him in this behalf may, on the application of the accused compound an offence unde permission of Environmental Tribunal or Environmental Magistrate in accordance with suc be prescribed.

(7) Where the Director-General of the [80] [Provincial Agency] is of the opinio contravened any provision of this Act, he may, subject to the rules, by notice in writing to him to pay to the [81] [Provincial Agency] an administrative penalty in the amount set out i day the contravention continues; and a person who pays an administrative penalty for a co be charged under this Act with an offence in respect of such contravention.

(8) The provisions of sub-sections (6) and (7) shall not apply to a person who has been of offence or who has compounded an offence under this Act or who has paid an adminis contravention of any provision of this Act.

18. **Offences by bodies corporate**.– Where any contravention of this Act has been co corporate, and it is proved that such offence has been committed with the consent or c attributed to any negligence on the part of, any director, partner, manager, secretary or othe corporate, such director, partner, manager, secretary or other officer of the body corpora guilty of such

contravention along with the body corporate and shall be punished accordingl

Provided that in the case of a company as defined under the Companies Ordinance, 19 only the Chief Executive as defined in the said Ordinance shall be liable under this section.

Explanation.– For the purposes of this section, "body corporate" includes a firm, associ a society registered under the Societies Registration Act, 1860 (XXI of 1860), or und Societies Act, 1925 (VII of 1925).

19. **Offences by Government Agencies, local authorities or local councils**.– Where any Act has been committed by any Government Agency, local authority or local council, and i contravention has been committed with the consent or connivance of, or is attributable to an part of the Head or any other officer of the Government Agency, local authority or local co other officer shall also be deemed guilty of such contravention along with the Government Ag or local council and shall be liable to be proceeded against and punished accordingly.

20. **Environmental Tribunals**.– (1) The [82][Government] may, by notification in the offici as many Environmental Tribunals as it considers necessary and, where it establish Environmental Tribunal, it shall specify territorial limits within which, or the clause of cases each one of them shall exercise jurisdiction under this Act.

(2) An Environmental Tribunal shall consist of a Chairperson who is, or has been appointment as, a Judge of the High Court to be appointed after consultation with the Chief

(3) For every sitting of the Environmental Tribunal, the presence of the Chairperson a Member shall be necessary.

[84]

[(4) A decision of an Environmental Tribunal shall be expressed in terms of the opi
or if the case has been decided by the Chairperson and only one of the members and the opinion between them, the decision of the Environmental Tribunal shall be expressed in ter the Chairperson.]

(5) An Environmental Tribunal shall not, merely by reason of a change in its compositi any member from any sitting, be bound to recall and rehear any witness who was given ev on the evidence already recorded by, or produced, before it.

(6) An Environmental Tribunal may hold its sittings at such places within its territori Chairperson may decide.

(7) No act or proceeding of an Environmental Tribunal shall be invalid by reason onl vacancy in, or defect in the constitution of, the Environmental Tribunal.

(8) The terms and conditions of service of the Chairperson and members of the Environme such as may be prescribed.

21. **Jurisdiction and powers of Environmental Tribunals**.– (1) An Environmental Tribuna powers and perform such functions as are, or may be, conferred upon or assigned to it by the rules and regulations made thereunder.

(2) All contravention punishable under sub-section (1) of section 17 shall exclusiv Environmental Tribunal.

(3) An Environmental Tribunal shall not take cognizance of any offence triable under su on a complaint in writing by–

(a) the [85][Provincial Agency] [86][or an officer authorized by it] or any Govern council; and

(b) any aggrieved person, who has given notice of not less than thirty days t Agency] [88][or an officer authorized by it] of the alleged contravention and of h a complaint to the Environmental Tribunal.

(4) In exercise of its criminal jurisdiction, the Environmental Tribunal shall have the vested in the Court of Session under the Code of Criminal Procedure, 1898 (Act V of 1898).

(5) In exercise of the appellate jurisdiction under section 22, the Environmental Tribunal powers and shall follow the same procedure as an appellate court in the Code of Civil Proce 1908).

(6) In all matters with respect to which no procedure has been provided for in this Act Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V o

(7) An Environmental Tribunal may, on application filed by any officer duly authorized Director-General of the [89][Provincial Agency], issue bailable warrant for the arrest of any p reasonable suspicion exists, of his having been involved in contravention punishable unde section 17:

Provided that such warrant shall be applied for, issued, and executed in accordance with Code of Criminal Procedure, 1898 (Act V of 1898):

Provided further that if the person arrested executes a bond with sufficient sureties in endorsement on the warrant, he shall be released from custody, failing which he shall be t delay to the officer-in-charge of the nearest police station.

(8) All proceedings before the Environmental Tribunal shall be deemed to be judicial pr meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860), an Tribunal shall be deemed to be a court for the purposes of sections 480 and 482 of the Code of 1898 (Act V of 1898).

(9) No court other than an Environmental Tribunal shall have or exercise any jurisdictio

(10) Where the Environmental Tribunal is satisfied that a complaint made to it under su and vexatious to the knowledge of the complainant, it may, by an order, direct the compl person complained against such compensatory costs which may extend to one hundred thous

22. **Appeals to the Environmental Tribunal**.– (1) Any person aggrieved by any order or [Provincial Agency] under any provision of this Act and rules or regulations made thereunder with the Environmental Tribunal within thirty days of the date of communication of the impugn to such person.

(2) An appeal to the Environmental Tribunal shall be in such form, contain such particulars an such fees as may be prescribed.

23. **Appeals from orders of the Environmental Tribunal**.– (1) Any person aggrieved by any sentence of the Environmental Tribunal passed under this Act may, within thirty days of co order or sentence, prefer an appeal to the High Court.

(2) An appeal under sub-section (1) shall be hard by a Bench of not less than two Judges.

24. **Jurisdiction of Environmental Magistrates**.– (1) Notwithstanding anything contai Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force provisions of this Act, all contraventions punishable under sub-section (2) of section 17
triable by a judicial Magistrate of the first class as Environmental Magistrate especially behalf by the High Court.

(2) An Environmental Magistrate shall be competent to impose any punishment specifie and (4) of section 17.

(3) An Environmental Magistrate shall not take cognizance of an offence triable u except on a complaint in writing by–

(a) the [91] [Provincial Agency], or Government Agency or local council; and

(b) any aggrieved person.

25. **Appeals from orders of Environmental Magistrates**.– Any person convicted of any c Act or the rules or regulations by an Environmental Magistrate may, within thirty days f conviction, appeal to the Court of Sessions, whose decision thereon shall be final.

[92]

[26. Power to delegate.– The Government may, by notification in the official Gazette, d

of the Provincial Agency's powers or functions under this Act, the

rules or the regulations Agency, local council or local authority.]

[93]

[27. **Power to give directions**.– In the performance of its functions, the Provincial Ag

by the directions given to it in writing by the Government.]

[94]

[28. **Indemnity**.– No suit, prosecution or other legal proceedings shall lie against t

Council, the Provincial Agency, the Director General of the Provincial Agency, members, experts, advisors, or consultants of the Provincial Agency or the Environmental Tribuna Magistrate or any other person for anything which is in good faith done or intended to be do the rules or the regulations.]

29. **Dues recoverable as arrears of land revenue**.– Any dues [Provincial

recoverable by the [95]

Act, or the rules or regulations made thereunder shall be recoverable as arrears of land revenue.

30. **Act to override other laws**.– The provisions of this Act shall have effect notwi inconsistent therewith contained in any other law for the time being in force.

[96]

environmental agreements, specified in the Schedule to this Act.

32. Power to amend the Schedule.– The [97] [Government] may, by notification in the offi the Schedule so as to add any entry thereto or modify or omit any entry therein.

33. **Power to make regulations**.– (1) For carrying out the [Prov purposes of this Act, the [98] official] by notification in the [Provincial Government], m Gazette and with the approval of the [99] inconsistent with the provisions of this Act or the rules made thereunder.

(2) In particular and without prejudice to the generality of the foregoing power, su provide for–

(a) submission of periodical reports, data or information by any Government Agen local council in respect of environmental matters;

(b) preparation of emergency contingency plans for coping with environmental h caused by accidents, natural disasters and calamities;

(c) appointment of officers, advisors, experts, consultants and employees;

(d) levy of fees, rates and charges in respect of services rendered, actions implemented;

(e) monitoring and measurement of discharges and emissions;

(f) categorization of projects to which, and the manner in which, section 12 applies;

(g) laying down of guidelines for preparation of initial environmental examination and e assessment and development of procedures for their filling, review and approval;

(h) providing procedures for handling hazardous substances; and

(i) installation of devices in, use of fuels by, and maintenance and testing of motor of air and noise pollution.

34. **Repeal, savings and succession**.– (1) The Pakistan Environmental Protection Ordinanc 1983) is hereby repealed.

(2) Notwithstanding the repeal of the Pakistan Environmental Protection Ordinance 1983), any rules or regulations or appointments made, orders passed, notifications issued contracts entry into, proceedings commenced, rights acquired liabilities incurred, penalties, r levied, things done or action taken under any provisions of that Ordinance shall, so inconsistent with the provisions of this Act, be deemed to have

been made, passed, issued into, commenced, acquired, incurred, levied, done or taken under this Act.

[100]

[(3) Notwithstanding the omission of section 8 of the Act by the Punjab Envir
(Amendment) Act 2012 (XXXV of 2012), any rules, regulations or appointments m notifications issued, powers delegated, contracts entered into, proceedings taken, rights incurred, penalties imposed, rates, fees or charges levied or other things done or actio provisions of said section, shall continue to have effect unless recalled withdrawn or cancelle

Schedule

(See section 31)

1. International Plant Protection Convention, Rome, 1951.
2. Plant Protection Agreement for the South-East Asia and Pacific Region (as amended),
3. Agreement for the Establishment of a Commission for Controlling the Desert Locust i of its Distribution Area in South-West Asia (as amended), Rome, 1963.
4. Convention on Wetlands of International importance Especially as Waterfowl Habitat, amending Protocol, Paris, 1982.
5. Convention Concerning the Protection of World Cultural and Natural Herita Convention), Paris, 1972.
6. Convention on International Trade in Endangered Species of Wild Fauna and Flora (C

8. Convention on the Law of the Sea, Monte go Bay, 1982.
9. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985.
10. Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987 and am
11. Agreement on the Network of Aquaculture Centres in Asia and the Pacific, Bangkok, 1
12. Convention on the Control of Transboundary Movements of Hazardous Waste and T 1989.
13. Convention on Biological Diversity, Rio De Janeiro, 1992.
14. United Nations Framework Convention on Climate Change, Rio De Janeiro, 1992.

[1]

This Act of Parliament received the assent of the President on 3 December 1997, and was published in the Gazette of Pakistan, Extraordinary, dated 6 December 1997.

This Act was originally in the Federal ambit, however, the subject on which this law was enacted devolved to the provinces by virtue of 18th Amendment in the Constitution, hence it was adapted, with amendments, for the province of the Punjab by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[2]

Substituted for the word "Pakistan" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[3]

Substituted for the word "Pakistan" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[4]

Substituted for the word "Pakistan" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[5]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words "Federal Agency or a Provincial Agency".

[6]

Omitted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[7]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[8]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[9]

Omitted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[10]

Substituted for the words "Federal Government or a Provincial Government" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[11]

Omitted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[12]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[13]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[14]

Inserted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[15]

Substituted for the word "National" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[16]

Omitted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[17]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the word "Pakistan".

[18]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the word "Pakistan".

[19]

Substituted for "; and" by the Punjab Fair Representation of Women Act 2014 (IV of 2014).

[20]

Added by the Punjab Fair Representation of Women Act 2014 (IV of 2014).

[21]

Substituted, for the words "Federal Government" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[22]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the word "National".

[23]

Substituted for the word "National" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[24]

[25]

[26]

[27]

[28]

[29]

[30]

[31]

[32]

Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012). Substituted for the word “Pakistan” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

Substituted for sub-section (1) by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012). Substituted for the words “Federal Government” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012). Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

Substituted for the words “Federal Government” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012). Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

Substituted by the Punjab Environmental Protection (Amendment) Act 2017 (XIX of 2017), for the following:

“(5) The Director-General may, by general or special order, delegate any of these powers and functions to staff appointed under sub-section (3).”

[33]

Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[34]

Substituted for the word “Federal Government” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[35]

Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[36]

Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[37]

The word “national” omitted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[38] The word “national” omitted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[39] Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012) for the word “National”.

[40]

[41] Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012) for the word “National”. Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012) for the words “Federal Agency”. Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012) for the word “National”.

[42] Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012) for the word “National”.

[43] Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[44]

[45] Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[46] Substituted for the words “Federal Government” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[47] Substituted for the words “Federal Government” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[48] Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[49] Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[50] Substituted for the words “Federal Government” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[51]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[52]

Section 8 "**Establishment, powers and functions of the Provincial Environmental Protection Agencies"** omitted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[53]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[54]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words "Federal Government or the Provincial Governments".

[55]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012)

[56]

Substituted for the word "National" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[57]

The words "sub-clause (i) of" omitted by the Punjab Environmental Protection (Amendment) Act 2017 (XIX of 2017).

[58]

Substituted for the words "Federal Government" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[59]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words "Federal Agency".

[60]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words "Federal Agency".

[61]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words "Federal Agency".

[62]

Substituted for the words "Federal Agency" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[63]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words "Federal Government".

[64]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words "Federal Agency".

[65]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words "Federal Government".

[66]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words "Federal Agency".

[67]

Section 13 substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[68]

Substituted for the words "Federal Agency" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[69]

Substituted for the word "National" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[70]

Substituted for the words "Federal Agency" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[71]

Substituted for the words "Federal Agency" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[72]

Sub-section (1) substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[73]

Substituted for the words "Federal Agency or Provincial Agency" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[74]

Substituted for the words "Federal Agency or Provincial Agency" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[75]

Substituted for the words "one million" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[76]

Substituted for the words "Federal Agency or Provincial Agency" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[77]

Substituted for the words "one hundred thousand" by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[78]

Substituted for the words and commas “Federal Agency or, as the case may be, Provincial Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[79]

Substituted for the words “Federal Agency or of a Provincial Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[80]

Substituted for the words “Federal Agency or of a Provincial Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[81]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words and commas “Federal Agency or, as the case may be, Provincial Agency”.

[82]

Substituted for the words “Federal Government” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[83]

Substituted for the words “Federal Government” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[84]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[85]

Substituted for the words “Federal Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[86]

Inserted by the Punjab Environmental Protection (Amendment) Act 2017 (XIX of 2017).

[87]

Substituted for the words and comma “Federal Agency, or the Provincial Agency concerned” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[88]

Inserted by the Punjab Environmental Protection (Amendment) Act 2017 (XIX of 2017).

[89]

Substituted for the words and comma “Federal Agency or of Provincial Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[90]

Substituted for the words “Federal Agency or any Provincial Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[91]

Substituted for the words and comma “Federal Agency, Provincial Agency”, by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[92]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[93]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[94]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[95]

Substituted for the words “Federal Agency or Provincial Agency” by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012).

[96]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words “Federal Government”.

[97]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words “Federal Government”.

[98]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words “Federal Government”, for the words “Federal Agency”.

[99]

Substituted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012), for the words “Federal Government”.

[100]

Original sub-section (3) was omitted by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012); the present sub-section (3) was added by the Punjab Environmental Protection (Amendment) Act 2017 (XIX of 2017); and shall be deemed to have been so added on and from 18 April 2012 when the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012) came into force.

Khyber Pakhtunkhwa Environmental Protection Act, 2014.

EXTRAORDINARY REGISTERED NO. P.III

GOVERNMENT GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, THURSDAY 11th DECEMBER, 2014.

PROVINCIAL ASSEMBLY SECRETARIAT, KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 11th December, 2014.

No. PA/Khyber Pakhtunkhwa/Bills/2014/13370.—The Khyber Pakhtunkhwa Environmental Protection Bill, 2014 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 25th November, 2014 and assented to by the Governor of the Khyber Pakhtunkhwa on 4th December, 2014 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA ENVIRONMENTAL PROTECTION ACT, 2014

(KHYBER PAKHTUNKHWA ACT NO. XXXVIII OF 2014)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary), dated the 11th December, 2014).

AN

ACT

to provide for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development in the Province of the Khyber Pakhtunkhwa

Preamble.—WHEREAS it is expedient to provide for the protection, conservation, rehabilitation and improvement of the environment, monitoring, prevention and control of pollution, and promotion of sustainable development in the Province of the Khyber Pakhtunkhwa, and for matters connected therewith and incidental thereto;

It is hereby enacted as follows:

1. **Short title, extent and commencement.** --- (1) This Act may be called the Khyber Pakhtunkhwa Environmental Protection Act, 2014.

(2) It extends to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. **Definitions.**--- In this Act, unless there is anything repugnant in the subject or context,-

(a) "administrative penalty" means a penalty imposed for violation of the provisions of this Act;

(b) "adverse environmental effect" means pollution or impairment of, or damage to, the environment, and includes,---

(i) impairment of, or damage to, human health and safety or to property or biodiversity;

(ii) pollution to physical, biological, social, economic environment or to geological, hydrological resources or various land forms;

(iii) damage to public comfort, aesthetic conditions, ecological balance and meteorological conditions;

(iv) damage to aquifers, vegetal canopy, cultural heritage or archeological sites; and

(v) any other adverse environmental effect as may be specified in the rules;

(c) "Agency" means the Khyber Pakhtunkhwa Environmental Protection Agency established under section 5;

(d) "aggrieved person" means a person whose legal right is violated by any act or omission or is directly and adversely affected by an order of any authority;

(e) "agricultural waste" means waste from farm and agricultural activities including poultry, cattle farming, animal husbandry, residues from the use of fertilizers, of pesticides and other farm chemicals;

(f) "air pollutant" means any substance that causes pollution of, air and includes soot, smoke, dust particles, odour, light, electro-magnetic radiation, heat, fumes, combustion exhaust, exhaust gases, noxious gases, hazardous substances and radioactive substances;

(g) "biodiversity" or "biological diversity" means the variability among living organisms from all sources, including inter-alia terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, includes diversity within species, between species and of eco-systems;

(h) "bio-safety" means the mechanisms developed through policy and procedure to ensure human health and environmentally safe application of biotechnology;

(i) "Board" means the Khyber Pakhtunkhwa Environmental Improvement Fund Board established under section 9;

(j) "Complaint" means a complaint under section 200 of the Code of Criminal Procedure, 1898 (Act No. V of 1898) as defined in section 4 of the said Code;

(k) "Council" means the Khyber Pakhtunkhwa Environmental Protection Council established under section 3;

(l) "climate change" means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

(m) "discharge" means and includes spilling, leaking, pumping, depositing, seeping, releasing, flowing out, pouring, emitting, emptying or dumping;

(n) "ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

(o) "effluent" means any material in solid, liquid or gaseous form or combination thereof being discharged from industrial activity or any other source and includes a slurry, suspension or vapour;

(p) "electronic waste" means the waste generated due to the dismantling, repair, damage of electronic equipments;

(q) "emission" means the extent of pollutant's discharges per unit time or the extent of pollutant per unit volume of gas, liquid or vapour emitted;

(r) "environment" means,---

(i) air, water and land;

(ii) all layers of the atmosphere;

(iii) all organic and inorganic matter and living organisms;

(iv) the ecosystem or flora and fauna, and ecological relationships;

(v) buildings, structure's, roads, facilities, installations and works;

(vi) all social or cultural and economic conditions and activities affecting community life; and

(vii) the inter-relationships between any of the factors specified in sub-clauses (i) to (vi);

(s) "environmental impact assessment" means an environmental study comprising collection of data, prediction of qualitative and quantitative impacts of a proposed developmental activity, comparison of alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations, measures and such other components as may be prescribed;

(t) "Environmental Magistrate" means the Magistrate of the First Class specified in section 25;

(u) "Environmental Protection Order" means an order issued under section 17;

(v) "factory" means any premises in which industrial activity is being undertaken;

(w) "Fund" means the environmental improvement Fund established under section 8 of this Act;

(x) "genetically modified organism" means any organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology and which does not occur naturally through mating and/or recombination and includes both living and non-living modified organisms;

(y) "Government" means the Government of the Khyber Pakhtunkhwa;

(z) "Government Agency" includes, ---

(i) a Department, an Attached Department or any other office of Government; and

(ii) a developmental authority, local authority, company or body corporate established or controlled by Government;

(aa) "hazardous substance" means ,---

(i) a substance or mixture of substances, except the pesticide as defined in the Agricultural Pesticides Ordinance, 1971 (II of 1971), which, by reason of its physical, chemical or biological properties or toxic, explosive, flammable, corrosive, infectious, radioactive, persistent or having any other characteristics as may be prescribed, or is likely to cause, directly or in combination with other substances, an adverse environmental effect; and

(ii) any substance which may be prescribed as a hazardous substance;

(bb) "hazardous waste" means the waste which contains hazardous substances or as may be prescribed and includes healthcare risk wastes and radioactive waste;

(cc) "hospital waste" includes waste from medical supplies, hospital, clinics, laboratories and veterinary facilities and materials of all kinds including waste blood, tissue, organs and other parts of human and animal bodies;

(dd) "industrial activity" means any operation or process for manufacturing, making, formulating, synthesizing, altering, repairing, crushing, grinding, cleaning ornamenting, finishing, packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or for mining, for oil and gas exploration and development, or for pumping water or sewage, or for generating, transforming or transmitting power or for any other industrial or commercial purposes;

(ee) "industrial waste" means waste resulting from an industrial activity;

(ff) "initial environmental examination" means a preliminary environmental review of the reasonably, foreseeable qualitative and quantitative impacts on the environment of a proposed project to determine whether it is likely to cause an adverse environmental effect;

(gg) "Khyber Pakhtunkhwa Environmental Quality Standards" means standards established by the Agency under clause (v) of sub-section (1) of section 6 and approved, by the Council under clause (iii) of sub-section (1) of section 4;

(hh) "local authority" means any agency set up or designated by Government, through notification in the official Gazette, to be a local authority for the purposes of this Act;

(ii) "local council" means a body constituted or established under a law regulating local government;

(jj) "locomotive" a wheeled vehicle consisting of a self propelled engine that is used to draw trains along railway tracks;

(kk) "motor vehicle" means any mechanically propelled vehicle adapted for use upon land whether its power of propulsion is transmitted thereto from an external or internal source, and includes a chassis to which a body has not been attached, and a trailer;

(ll) "municipal waste" includes sewage, refuse, garbage, waste from abattoirs, sludge and human excreta and the like;

(mm) "noise" means the intensity, duration and character of sound from all sources, and includes vibration;

(nn) "nuclear waste" means waste from any nuclear reactor or nuclear plant or other nuclear energy system, whether or not such waste is radioactive;

(oo) "person" means any natural person or legal entity and includes an individual, firm, association, partnership, society, group, company, corporation, co-operative society, Government Agency, non-governmental organization, community-based organization, village organization, local council or local authority and, in the case of a vessel, the master or other person having for the time being the charge or control of the vessel;

(pp) "pollution" means the contamination of air, land or water by the discharge of emission of effluent or wastes or air pollutants or noise or other matter which either directly or indirectly or in combination with other discharges or substances alters unfavorably the chemical, physical, biological, radiational, thermal or radiological or aesthetic properties of the air, land or water or which may, or is likely to make the air, land or water unclean, noxious or impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to biodiversity;

(qq) "pollution charge" means a fine imposed on any person in proportion to his load of pollution;

(rr) "prescribed" means prescribed by rules made under this Act;

(ss) "project" means any activity, plan, scheme, proposal or undertaking involving any change in the environment and includes,---

(i) construction by use of buildings or urban development and other works;

(ii) construction or use of roads or other transport systems;

(iii) construction or operation of factories or industrial estates, wastes treatment, disposal facilities and other installations;

(iv) mineral prospecting, surveying, exploration of oil and gas, mining, quarrying, stone-crushing, drilling and the like;

(v) any change of land use or water use;

(vi) energy production or refineries or transmission lines; and

(vii) alteration, expansion, repair, decommissioning or abandonment of existing buildings or other works, roads or other transport systems, factories or other installations;

(tt) "proponent" means the person who proposes or intends to undertake a project;

(uu) "Province" means the Province of the Khyber Pakhtunkhwa;

(vv) "public complaint" means a statement of allegations leveled against any person regarding creating pollution and affecting the environment adversely;

(ww) "rules" mean rules made under this Act;

(xx) "radiation" means energy that is radiated or transmitted in the form of rays or waves;

(yy) "respondent" means the accused person against whom the Agency proceeds or institute complaint or miscellaneous applications before the Environmental Protection Tribunal for adjudicating upon it according to provisions of this Act;

(zz) "reward" means a recompense or premium offered or bestowed by the Government or the Agency upon its members in a prescribed manner in return for special or extra ordinary service performed for special achievements to realize the objectives of this Act;

(aaa) "SCHEDULE" means SCHEDULE appended to this Act;

(bbb) "sewage" means liquid or semi-solid wastes and sludge from sanitary conveniences, kitchens, laundries, washing and similar activities and from any sewerage system or sewage disposal works;

(ccc) "SOPs" means Standard Operating Procedures notified by the Agency;

(ddd) "standards" means qualitative and quantitative standards for air, water, soil and discharge of effluent and wastes and for emission of air pollutants and noise either for general applicability or for a particular area, or from a particular production process, or for a particular product, and includes the Khyber Pakhtunkhwa Environmental Quality Standards, emission standards and other standards established under this Act and the rules made there under;

(eee) "strategic environmental assessment" means an analysis or series of analyses that are systematic, overall and participatory to ensure that the principle of sustainable development is the basis for and is integrated into the development of a policy, plan or programme;

(fff) "sustainable development" means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs;

(ggg) "Tribunal" means the Khyber Pakhtunkhwa Environmental Protection Tribunal constituted under section 21;

(hhh) "vessel" includes anything made for the conveyance by water of human beings or of goods; and

(iii) "waste" means any substance or object or material which has been, is being or is intended to be, discarded or disposed of, and includes liquid waste, solid waste, waste gases, suspended waste, industrial waste, agricultural waste, radioactive and nuclear waste, mist, animal waste, electronic waste, municipal waste, hospital waste, pharmaceutical waste, plastic and polythene waste and residues from the incineration of all types of waste.

3. **Establishment of the Khyber Pakhtunkhwa Environmental Protection Council.---**

(1) Government shall, by notification in the official Gazette, establish a Council to be known as the Khyber Pakhtunkhwa Environmental Protection Council consisting of--

(i)	Chief Minister or any other person nominated by the Chief Minister;	Chairperson
(ii)	Minister for Environment Department;	Vice Chairperson
(iii)	Chief Secretary of the Province;	Member
(iv)	Additional Chief Secretary Planning and Development Department;	Member
(v)	Secretaries to Government, Environment, Finance, Law, Irrigation, Communication and Works, Transport, Health, Energy and Power, Local Government, Industries, **Tourism** and Public Health Engineering Departments;	Members
(vi)	such other persons not exceeding ten as Government may nominate, including representatives of the Chambers of Commerce and Industry and industrial associations, engineering associations and representatives of the medical, legal professions, trade unions, and Non-Governmental Organizations concerned with the environment and development, and scientists, technical experts, educationists, **Chairman text book board and one vice chancellor as representatives of all universities in the Province**; and	Members
(vii)	Director General, Environmental Protection Agency.	Member/ Secretary

(2) The members of the Council, other than ex-officio members shall be nominated in accordance with procedure as may be prescribed and shall hold office for a term of three years and shall be eligible for re-nomination, but shall not hold office for more than two consecutive terms.

(3) The Council shall frame its own rules of procedure.

(4) The Council shall hold meetings, as and when necessary, but at least one meeting shall be held in a year.

(5) The Council may constitute committees of its members and entrust them with such functions as it may deem fit, and the recommendations of the committees shall be submitted to the Council for approval.

(6) The Council, or any of its committees, may invite any technical expert or representative of any Government Agency or non-governmental organization or other person possessing specialized knowledge of any subject for assistance in performance of its functions.

4. **Functions and powers of the Council.**--- (1) The Council shall,--

(i) co-ordinate, supervise and support enforcement of the provisions of this Act and the rules made thereunder;

(ii) approve comprehensive environmental policies, action plans and ensure their implementation;

(iii) approve the Khyber Pakhtunkhwa Environmental Quality Standards;

(iv) liaise and co-ordinate with other Provinces and Federal Government, through appropriate inter-provincial forums, or Government Agency regarding formulation and implementation of standards and policies relating to environmental matters with an inter-provincial impact;

(v) relax or make stringent the application of existing Khyber Pakhtunkhwa Environmental Quality Standards for one time or for a particular period for a specific activity or area or source under particular circumstances not- withstanding the provisions of this Act;

(vi) provide guidelines for the protection and conservation of species, habitats and biodiversity in general, and for the conservation of, renewable and non-renewable resources, solid waste management and water sanitation;

(vii) provide guidelines for bio-safety and for the use of genetical modified organisms;

(viii) co-ordinate integration of the principles and concerns of sustainable development into development plans and policies at the provincial, district and local levels **by formulating / prepare district and provincial conservation strategies**;

(ix) consider the Provincial Environment Report and give appropriate directions, thereon; and

(x) formulate a mechanism for implementation of Multilateral Environmental Agreements (MEAs) signed by the Government of Pakistan.

(2) The Council may, either itself or on the request of any person or organization, direct the Agency or Government Agency to prepare, submit, promote or implement projects for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, and the sustainable development of resources, or to undertake research in any specified aspect of the environment.

(3) (i) promote Eco-tourism initiatives, establish alpine and other type Botanical Gardens in suitable locations and develop a comprehensive Land Zonation strategy to save the agriculture and forest land; and

(ii) constitution of High Level Commission to resolve the issue of land ownership disputes between the government and local communities pending in courts for decades.

5. Establishment of the Khyber Pakhtunkhwa Environmental Protection Agency.-- (1) The Khyber Pakhtunkhwa Environmental Protection Agency, already established under the Pakistan Environmental Protection Act, 1997 shall be deemed to have been established under this Act to exercise the powers and perform the functions assigned to it under the provisions of this Act and the rules made there under.

(2) The Agency shall be headed by a Director-General who shall be appointed by Government in the manner as it may determine.

(3) The Agency shall have such administrative, technical, legal and enforcement staff, as Government may appoint.

(4) The powers and functions of the Agency shall be exercised and performed by the Director-General.

(5) The Director General may, by general or special order, delegate any of the powers and functions to staff appointed under sub-section (3).

(6) For assisting the Agency in the discharge of its functions, Government may establish Advisory Committees for various sectors and appoint their members from amongst eminent position of the relevant sector, educational institutions, research institutes and non-governmental organizations.

6. Functions of the Agency.---(1) The Agency shall---

(i) administer and implement the provisions of this Act and the rules made thereunder;

(ii) prepare, in co-ordination with the appropriate Government Agency or local council and in consultation with the concerned sectoral Advisory Committees where established, environmental policies for the approval of the Council;

(iii) take all necessary measures for the implementation of the environmental policies approved by the Council;

(iv) prepare and publish an annual Environmental Report on the state of the environment in the Province;

(v) prepare, revise and establish the Khyber Pakhtunkhwa Environmental Quality Standards with the approval of the Council:

Provided that before seeking approval of the Council, the Agency shall publish the proposed Khyber Pakhtunkhwa Environmental Quality Standards for public opinion in accordance with the prescribed procedure;

(vi) ensure enforcement of the Khyber Pakhtunkhwa Environmental Quality Standards;

(vii) establish standards for the quality of the ambient air, water and land, by notification;

(viii) establish different standards for discharge or emission from different sources and for different areas and conditions as may be necessary:

Provided that---

(a) where these standards are less stringent than the Khyber Pakhtunkhwa Environmental Quality Standards prior approval of the Council shall be obtained; and

(b) list of areas, with the approval of the Council, in which any class of activities or projects shall not be carried out or shall only be carried out subject to certain specified safeguards;

(ix) co-ordinate with other Provinces, Federal Government, National and International Organizations for the implementation of environmental policies, issues concerns and programmes as may be prescribed;

(x) co-ordinate and facilitate the Government departments, agencies, organizations and institutions in the Khyber Pakhtunkhwa in adaptation to address the impacts of climate change;

(xi) establish systems and procedures for surveys, surveillance, monitoring, measurement, examination, investigation, research, inspection and audit to prevent and control pollution, and to estimate the costs of cleaning up pollution and rehabilitating the environment in various sectors;

(xii) carry out and conduct environmental monitoring and implementation of environmental approvals provided in this Act;

(xiii) carry out and conduct environmental audits of old industrial units in accordance with rules;

Explanation.-- Old industrial units means those established before the commencement of this Act;

(xiv) take measures to promote research and the development of science and technology which may contribute to the prevention of pollution, protection of the environment, and sustainable development;

(xv) issue licences for the consignment, handling, transport, treatment, disposal, storage, handling or otherwise dealing with hazardous substances;

(xvi) certify laboratories as approved laboratories for conducting tests and analysis and one or more research institutes as environmental research institutes for conducting research and investigation for the purposes of this Act;

(xvii) identify the needs for and initiate legislation in various sectors of the environment;

(xviii) provide guidance and technical assistance to the relevant Federal and Provincial Government Agencies in the management of natural and environmental incidents and disasters;

(xix) render advice and assistance in environmental matters including such information and data available with it as may be required for carrying out the purposes of this Act:

Provided that the disclosure of such information shall be subject to the restrictions contained in the proviso to sub-section (3) of section 13;

(xx) assist Government Agencies, local councils, local authorities and other persons to implement schemes for the proper disposal of wastes so as to ensure compliance with the Khyber Pakhtunkhwa Environmental Quality Standards;

(xxi) provide information and guidance to the public on environmental matters;

(xxii) recommend environmental courses, topics, literature and books for incorporation in the curricula and syllabi of educational institutions;

(xxiii) promote public education and awareness of environmental issues through mass media and other means including seminars and workshops;

(xxiv) establish and maintain mechanisms, including its own website, to disseminate information, subject to the provisions of this Act, regarding policies, plans and decisions of Government, the Council and the Agency relating to the environment;

(xxv) specify safeguards for the prevention of accidents and disasters which may cause pollution, collaborate with the concerned persons in the preparation of contingency plans for control of such accidents and disasters, and co-ordinate implementation of such plans;

(xxvi) review and approve mitigation plans and give guidance and directions, where necessary, for clean up operations ordered under this Act;

(xxvii) encourage the formation and working of non-governmental organizations, community organizations and village organizations to prevent and control pollution and promote sustainable development;

(xxviii) take or cause to be taken all necessary measures for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution and promotion of sustainable development; and

(xxix) perform any function which the Council may assign to it.

(2) The Agency may---

(i) undertake inquiries or investigation into environmental issues, either of its own accord or upon complaint from any person or organization;

(ii) direct any person to furnish any information or data relevant to its functions;

(iii) initiate with the prior approval of Government, requests for foreign assistance in support of the purposes of this Act and enter into arrangements with foreign agencies or organizations for the exchange of material or information and participate in international seminars or meetings;

(iv) recommend to Government and the Council the adoption of financial and fiscal programmes, schemes or measures for achieving environmental objectives and goals and the purposes of this Act, including---

(a) incentives, prizes, awards, rewards, subsidies, tax exemptions, and depreciation allowances; and

(b) taxes, duties and other levies;

(v) establish and maintain laboratories to help in the performance of its functions under this Act and to conduct research in various aspects of the environment and provide or arrange necessary assistance for the establishment of similar laboratories in the private sector; and

(vi) provide or arrange, in accordance with such procedure as may be prescribed, financial assistance for projects designed to facilitate the discharge of its functions.

7. Powers of the Agency.--- Subject to the provisions of this Act, the Agency may,---

(i) investigate any environmental or pollution issue;

(ii) enter into any premises with proper identification on the basis of reliable information to access the site where pollution offence is being committed or may likely to be committed or has been committed;

(iii) collect all sort of evidence regarding pollution offences from any premises, area, site, office, building, factory, display, exhibition etc;

(iv) call any information from any person required in inquiry or investigation of pollution offences;

(v) conduct surprise inspections or visits of any public or private premises for the purposes of this Act;

(vi) recover fines or charges levied upon any person by the Agency as arrears of Land Revenue;

(vii) seal or seize the attachments, holding, property, machinery, equipment or material involved in commission of pollution offences or take it into possession in a prescribed manner;

(viii) cause registration of criminal cases against any person causing hindrances, obstructions in discharge of official functions of the Agency;

(ix) exercise special or emergency powers to enter and inspect, direct, suspend, remove, seize, seal any activity or work or installation of machinery or premises creating pollution offence at high risk or intensity or disastrous situation;

(x) local police shall advance every sort of help and support to the members of the Agency in discharge of their official functions by making entries in daily reports register;

(xi) call the concerned officer or official of line departments / agencies for emergency help during disastrous or accidental situations declared by Government;

(xii) impose ban through an official notification, on commencement or operation of any activity or work or mobility or transport in a particular area or premises, by declaring it as environmentally sensitive or protected or prohibited, for a particular time period as and when required to safeguard the natural environment, prevent and control pollution with prior approval of the Government;

(xiii) fix and release fees, rates and charges for rendering any service or providing any facility, information or data under this Act or the rules made thereunder;

(xiv) enter into contracts, execute instruments, incur liabilities and do all acts or things necessary for proper management and conduct of its business;

(xv) appoint with the approval of the Government and in accordance with such procedures as may be prescribed, such advisers, experts and consultants as it considers necessary for the efficient performance of its functions on such terms and conditions as it may deem fit;

(xvi) summon and enforce the attendance of any person and require him to supply any information or document needed for the conduct of any enquiry or investigation into any environmental issue;

(xvii) seek information from or the assistance of any Ministry, Division or agency of the Federal Government, any Department or Agency of a Government, Local Authority, Political Agent, District Administration or law enforcement agency, including the police and it shall be the duty of such Ministry, Division, Department, Agency, Local Authority, Political Agent, District Administration or law enforcement agency, to furnish such information or render such assistance as may reasonably be required for implementation of this Act;

(xviii) enter and inspect, under the authority of a search warrant issued by the Environmental Protection Tribunal or Environmental Magistrate, search at any reasonable time, any land, building, premises, vehicle or vessel or other place where or in which there are reasonable grounds to believe that an offence under this Act has been, or is being, committed;

(xix) take samples of any materials, products, articles or substances or of the effluents, wastes or air pollutants, solid waste being discharged or emitted or of air, water, soil land or agricultural crops in the vicinity of the discharge emission in a prescribed manner;

(xx) conduct test and analysis of samples at the agency's laboratory or at any aboratory certified by the agency in a prescribed manner;

(xxi) confiscate any article used in the commission of the offence where the offender is not known or cannot be found within a reasonable time:

Provided that the power under clauses (xvi), (xix), (xx) and (xxi) shall be exercised in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) or the rules made thereunder or under the direction of the Tribunal or Environmental Magistrate; and

(xxii) establish the Provincial Environmental Co-ordination Committee comprising the Director-General as its Chairman and such other persons as Government may appoint as its members to exercise such powers and perform such functions as may be delegated or assigned to it by Government for carrying out the purposes of this Act and for ensuring co-ordination in implementation of environmental policies.

7A. The Provincial Environmental Council.--The Provincial Environmental Council shall facilitate establishment of district level environmental councils in a prescribed manner where the District Nazim of Local Government is also member in addition to the concerned government departments/ stake holders.

8. Establishment of the Khyber Pakhtunkhwa Environmental Improvement Fund.--(1) There shall be established the Khyber Pakhtunkhwa Environmental Improvement Fund.

(2) The Provincial Sustainable Development Fund established under the Pakistan Environmental Protection Act, 1997 shall be deemed to be a part of this Fund.

(3) Other sources of the Fund shall be--

(i) grants made or loans advanced by Federal and Provincial Governments;

(ii) aid and assistance, grants, advances, donations and other non-obligatory funds received from foreign governments, national or international agencies, and non-governmental organizations;

(iii) contributions from private organizations, and other persons;

(iv) fee collected through review of Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) and other Environmental Approvals;

(v) administrative fines or charges imposed and recovered by the Agency; and

(vi) fee or charges collected through test carried out in Laboratories and other alike services by the Agency.

(4) The Fund shall be utilized in accordance with such procedures as may be prescribed for--

(i) providing financial assistance to the projects in public and private sectors and activities/operations of the agency designed for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, the sustainable development of resources and for research in any specified aspect of environment;

(ii) creating a welfare pool for the members of the Agency to provide financial assistance and encouragement for discharging extraordinary duties or functions;

(iii) meet expenses of review of Initial Environmental Examination and Environmental Impact Assessment submitted to the Agency for approval, expenses incurring on uniforms and on other accessories required to equip the enforcement staff notified as such for the purpose of this Act;

(iv) pay professional fee to technical and legal experts for taking their services for a particular task in prescribed manner; and

(v) regular trainings for job oriented professional enhancement and capacity building including educational improvement of members of the Agency.

(5) The Fund shall be deposited in a designated account, to be maintained in the Scheduled Banks, on the title of Environmental Improvement Fund. The Chairperson and Secretary of the Environmental Improvement Fund Board shall be authorized to operate the designated account jointly with due approval of the Board.

9. **Constitution of the Khyber Pakhtunkhwa Environmental Improvement Fund Board.**--- The Fund shall be managed by a Board known as the Khyber Pakhtunkhwa Environmental Improvement Fund Board, consisting of---

(i)	Secretary to Government of the Environment Department;	Chairperson
(ii)	representatives of the Finance, Planning and Development, Local Government, Rural Development, Industries and Social Welfare Departments;	Members
(iii)	such other persons not exceeding three as Government may nominate including representatives of Chambers of Commerce and Industries, Non-Governmental Organizations and major development partners; and	Members
(iv)	Director-General of the Agency.	Member/Secretary

10. **Powers of the Board.**-- (1) The Board shall have the power to--

(i) sanction financial assistance for eligible projects and other activities mentioned in sub-section(3) of section 8;

(ii) invest the Fund in such profit-bearing government bonds, savings schemes and securities as it may deem suitable;

(iii) take such measures and exercise such powers as may be necessary for utilization of the Fund for the purposes specified in sub-section (3) of section 8; and

(iv) to invest the Fund in any other profitable activity which in the opinion of the Board, helps to achieve the objectives specified in this Act.

(2) The Board shall constitute committees of its members to undertake regular monitoring of projects financed from the Fund and to submit progress reports to the Board which shall publish an Annual Report incorporating its annual audited accounts and performance evaluation, based on the progress reports.

(3) The Board shall establish its finance section in the Khyber Pakhtunkhwa Environmental Protection Agency, with a minimum staff, not exceeding five (5) in numbers on contract basis, for maintaining the accounts and other operational records of the Environmental Improvement Fund Board. The salaries and other operational expenditures of the staff shall be paid from the Environmental Improvement Fund.

11. **Prohibition of certain discharges or emissions.**--- (1) Subject to the provisions of this Act, rules, notifications and guidelines made thereunder---

(i) no person shall discharge or emit or allow the discharge or emission of any effluent or wastes or air pollutant or noise, load, concentration or level which is in excess of the Khyber Pakhtunkhwa Environmental Quality Standards or, where applicable, the standards established under sub clause (vii) and (viii) of sub-section (1) of section 6; and

(ii) no person shall discharge effluents, emissions or wastes in excess of load permitted in the conditions of environmental permit or environmental approval or license.

(2) The Agency, with the approval of Government, may levy a pollution charge on any person who contravenes or fails to comply with the provisions of sub-section (1), to be calculated at such rate, and collected in accordance with such procedure as may be prescribed.

(3) Any person who pays the pollution charge levied under sub-section (2), shall not be charged with an offence with respect to that contravention or failure.

12. Strategic environmental assessment.---(1) Government may ask to carry out strategic environmental assessment, of all or any of the plan or policy given below:

(i) socio-economic development, industrial and agricultural development, urban and rural development;

(ii) land use and water use management;

(iii) the exploitation of natural resources;

(iv) economic zones or industrial parks and estates;

(v) transport and infrastructure;

(vi) solid, municipal and industrial waste;

(vii) tourism;

(viii) any other plan or policy likely to have an adverse impact on environment;

(ix) prevention of water pollution through improper sanitation and control flow of sanitation water into the rivers; and

(x) separate zones shall be specified for poultry and cattle farming and slaughtering houses.

(2) All Government Agencies, Local Councils and Local Authorities and Departments may be asked to conduct and formulate the strategic environmental assessment statement and shall submit it to the Agency which may contain--

(i) objectives, scale and environmental characteristics;

(ii) description of the natural, socio-economic and environmental conditions; and

(iii) assessment of possible environmental impact likely to be caused during implementation.

(3) The Agency shall, within 120 days of the filing of a strategic environmental assessment screening statement, complete in all respects---

(i) circulate the strategic environmental assessment report and conduct a public hearing of the strategic environmental assessment report;

(ii) review any comments received from the circulation and public hearing carried out under clause (i); and

(iii) advise the Government Agency, Local Council or Local Authority concerned to include such measures and take such steps, as it deems necessary, to modify the policy or plan according to environmental objectives and thereafter the policy or plan shall stand so modified.

(4) The provisions of sub-sections (1), (2) and (3) shall apply to such categories of plans and policies and in such manner as may be prescribed.

(5) The Agency shall maintain separate registers for strategic environmental assessment reports, which shall contain brief particulars of each policy and plan and a summary of decisions taken thereon and which shall be open to inspection for the public at all reasonable hours and the disclosure of information in such registers shall be subject to the provisions of this Act.

13. Initial environmental examination and environmental impact assessment.---(1) No proponent of a project shall commence construction and operation unless he has filed with the Agency an initial environmental examination or where the project is likely to cause an adverse environmental effect, an environmental impact assessment, and has obtained from the Agency, environmental approval in respect thereof.

(2) The Agency shall---

(a) review the initial environmental examination and accord its approval or require submission of an environmental impact assessment by the proponent; or

(b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, require that the environmental impact assessment be re-submitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to---

(a) trade, manufacturing or business activities, processes or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reasons to be recorded in writing, the Director-General of the Agency is of the opinion that the request for confidentiality is not well-founded or the public interest in the disclosure outweighs the possible prejudice to the competitive position of the project or its proponent; or

(b) International relations, national security or maintenance of law and order, except with the consent of Government; or

(c) matters covered by legal professional privilege.

(4) The Agency shall communicate its approval or otherwise within a period of four months from the date of the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules, provided that delay is not on part of the proponent for the provision of additional information asked for during the review process or conductance of public hearing of the project.

(5) Subject to sub-section (4), Government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.

(6) The provisions of sub-sections (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed.

(7) The projects or any activity of a proponent not covered under sub-section (6), specified in guidelines shall obtain a general environmental approval in a manner prescribed in guidelines in respect thereof.

(8) The Agency shall maintain separate Registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in sub-section (3).

14. Prohibition of import of hazardous waste.--- No person shall carry, import, bring , transport or deliver hazardous waste or cause to carry, import, bring, transport or delivery of hazardous waste into the territorial jurisdiction of the Province of the Khyber Pakhtunkhwa.

15. Handling of hazardous substances.--- Subject to the provisions of this Act, no person shall generate, collect, consign, transport, treat, dispose of, store, handle, deal in and use or import any hazardous substance except---

(a) under a licence issued by the Agency and in such manner as may be prescribed; or

(b) in accordance with the provisions of any other law for the time being in force, or of any International Treaty, Convention, Protocol, Code, Standard, Agreement or other instrument to which Pakistan or the Province of the Khyber Pakhtunkhwa is a party.

16. Regulation of motor vehicles.--- (1) Subject to the provisions of this Act, and the rules, notification and guidelines made thereunder, no person shall operate a motor vehicle from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the Khyber Pakhtunkhwa Environmental Quality Standards or where applicable the standards established under clauses (vii) and (viii) of sub-section (1) of section 6.

(2) For ensuring compliance with the standards mentioned in sub-section (1), the Agency may direct that any motor vehicle or class of vehicles or locomotive shall install such pollution control devices or other equipment or use such fuels or undergo such maintenance or testing as may be prescribed.

(3) Where a direction has been issued by the Agency under sub-section (2) in respect of any motor vehicles or class of motor vehicles, or locomotives, no person shall operate any such vehicle till such direction has been complied with.

17. Environmental Protection Order.--- (1) Where the Agency is satisfied that the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substances, or any other act or omission is likely to occur, or is occurring, or has occurred, in violation of the provisions of this Act, rules, notifications and guidelines or of the conditions of a licence or permit or environmental approval , and is likely to cause, or is causing or has caused an adverse environmental effect and violation of Khyber Pakhtunkhwa Environmental Quality Standards, the Agency may, after giving the person responsible for such discharge, emission, disposal, handling, act or omission, an opportunity of being heard, by order direct such person to take such measures that the Agency may consider necessary within such period as may be specified in the order.

(2) In particular and without prejudice to the generality of the foregoing power, such measures may include---

(i) immediate stoppage, preventing, lessening or controlling the discharge, emission, disposal, handling, act or omission, or to minimize or remedy the adverse environmental effect;

(ii) installation, replacement or alteration of any equipment or thing to eliminate or control or abate on a permanent or temporary basis, such discharge, emission, disposal, handling, act or omission;

(iii) action to remove or otherwise dispose of the effluent, waste, air pollutant, noise, or hazardous substances; and

(iv) action to restore the environment to the condition existing prior to such discharge, disposal, handling, act or omission, or as close to such condition as may be reasonable in the circumstances, to the satisfaction of the Agency.

(3) Where the person, to whom directions or orders, under sub-section (1) are given, does not comply therewith, the Agency may---

(i) ask the district administration and police to enforce or execute such orders or directions;

(ii) institute complaint before Environmental Tribunal or Environmental Magistrate to prosecute the violator, polluter, offender or defaulter; and

(iii) impose and recover administrative penalty or pollution charges as may be applicable.

(4) Notwithstanding the provisions of sub-section (1), where, for reasons to be recorded, the Agency is satisfied that prima facie evidence exists of the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substances, or any other act or omission is likely to occur, or is occurring, or has occurred, in violation of the provisions of this Act and that the provisions of this Act will be otherwise violated, it may pass an ad-interim order without hearing requiring such person to take such measures that it may consider necessary provided that an ad-interim order must be followed by a hearing of the person affected at the earliest possible time but not exceeding thirty days.

18. Penalties.--- (1) Whoever contravenes or fails to comply with the provisions of sections 11, 12, 13, 14, and 17 or any order passed issued thereunder, shall be punishable with a minimum fine of fifty thousand rupees which may extend to five million rupees, and in the case of a continuing contravention of failure, with a compulsory additional fine which may extend to one hundred thousand rupees for every day during which such contravention or failure continues:

Provided that if contravention of the provisions of sections 11 also constitutes contravention of the provisions of section 16, such contravention shall be punishable under sub-section (2) only.

(2) Whoever contravenes or fails to comply with the provisions of section 15 or 16 or any rule or conditions of any license, any order or direction, issued by the Council or the Agency, shall be punishable with a minimum fine of two thousands rupees which may extend to one hundred thousand rupees, and in case of continuing contravention or failure with an additional fine which may extend to one thousand rupees for every day during which such contravention continues.

(3) Where an accused has been convicted of an offence under sub-sections (1) and (2), the Tribunal and Environmental Magistrate, as the case may be, shall, in passing sentence, take into account the extent and duration of the contravention or failure constituting the offence and the attendant circumstances.

(4) Where an accused has been convicted of an offence under sub-section (1) and the Tribunal is satisfied that as a result of the commission of the offence monetary benefits have accrued to the offender, the Tribunal may order the offender to pay, in addition to the fines under sub-section (1), further additional fine commensurate with the amount of the monetary benefits.

(5) Where a person convicted under sub-section (1) or sub-section (2) had been previously convicted for any contravention under this Act or the rules made thereunder, the Tribunal or as the case may be Environmental Magistrate may, in addition to the punishment awarded thereunder--

(i) endorse a copy of the order of conviction to the concerned trade or industrial association, if any, or the concerned Provincial Chamber of Commerce and Industry or the Federation of Pakistan Chambers of Commerce and Industry;

(ii) sentence him to imprisonment for a term which may extend to two years;

(iii) order the closure of the factory;

(iv) order confiscation of the factory, machinery and equipment, vehicle material or substance, record or document or other object used or involved in contravention of the provisions of this Act;

(v) order such person to restore the environment at his own cost, to conditions existing prior to such contravention or as close to such conditions as may be reasonable in the circumstances to the satisfaction of the Agency; and

(vi) order that compensation to be paid to any person or persons for any loss, or damage to their health or property suffered by such contravention.

(6) Where the Director-General of the Agency is of the opinion that a person has contravened any provision of this Act he may, subject to the rules, by notice in writing to that person require him to pay to the Agency a fine in the amount set out in the notice for each day the contravention continues, and a person who pays a fine for a contravention shall not be charged under this Act with an offence in respect of such contravention.

(7) The provisions of sub-section (6) shall not apply to a person who has been previously convicted of offence under this Act or who has paid a fine for a contravention of any provision of this Act.

19. Offences by bodies corporate.---Where any contravention of this Act has been committed by a body corporate, and it is proved that such offence has been committed with the consent or connivance of, or is attributed to any negligence on the part of, any director, partner, manager, secretary or other officer of the body corporate, such director, partner, manager, secretary or other officer of the body corporate, shall be deemed guilty of such contravention along with the body corporate and shall be punished accordingly:

Provided that in the case of a company as defined under the Companies Ordinance, 1984 (Act No. XLVII of 1984), only the Chief Executive as defined in the said Ordinance shall be liable under this section.

Explanation.-- For the purposes of this section, "body corporate" includes a firm, association of persons and a society registered under the Societies Registration Act, 1860 (Act No.XXI of 1860), or under the Co-operative Societies Act, 1925 (Act No. VII of 1925).

20. Offences by Government Agencies, local authorities or local councils.---Where any contravention of this Act has been committed by any Government Agency or local council, and it is proved that such contravention has been committed with the consent or connivance of, or is attributable to any negligence on the part of, the Head or any other officer of the Government Agency or local council, such Head or other officer shall also be deemed guilty of such contravention along with the Government Agency or local council and shall be liable to be proceeded against and punished accordingly.

21. Establishment of Khyber Pakhtunkhwa Environmental Protection Tribunals.(1) Government shall, by notification in the official Gazette, establish one or more Environmental Protection Tribunals as it considers necessary and, where it establishes more than one Environmental Protection Tribunals, it shall specify territorial limits within which, or the class of cases in respect of which, each one of them shall exercise jurisdiction under this Act.

(2) The Tribunal shall consist of a Chairperson who is, or has been, or is qualified for appointment as, a Judge of the High Court and two members of which at least one shall be a technical member with suitable professional qualifications and experience in the environmental field as may be prescribed.

(3) The Chairman and members shall be appointed by Government after consultation with the Chief Justice of the High Court.

(4) For every sitting of the Tribunal, the presence of the Chairperson and not less than one member shall be necessary. However, in case of non availability of the Chairperson the senior member shall act as a Chairperson till the availability of the Chairperson.

(5) A decision of the Tribunal shall be expressed, in terms of the opinion of the majority of its members, including, the Chairperson or if the case has been decided by the Chairperson and only one of the members and there is a difference of opinion between them, the decision of the Tribunal shall be expressed in terms of the opinion of the Chairperson.

(6) The Tribunal shall not, merely by reason of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded by or produced before it.

(7) The Tribunal may hold its sittings at such places within its territorial jurisdiction as the Chairperson may decide.

(8) No act or proceeding of the Tribunal shall be invalid by reason, only of the existence of a vacancy or defect in the constitution of, the Tribunal.

(9) The terms and conditions of services of the Chairperson and members of the Tribunal shall be such as may be prescribed.

22. Jurisdiction and powers of the Tribunals.--- (1) The Tribunal shall exercise such powers and perform such functions as are, or may be conferred upon or assigned to it by or under this Act or the rules made thereunder.

(2) All contravention punishable under sub-section (1) of section 18 shall exclusively be triable by the Tribunal.

(3) The Tribunal shall not take cognizance of any offence triable under sub-section (2) except on a complaint in writing by---

(i) the Agency or any Government Agency or local council; and

(ii) any aggrieved person, who has given a notice of not less than thirty days to the Agency in case of complaint against private person or organization or to the officer responsible, in case of a complaints against government departments, local council and local authority of the alleged contravention and of his intention to make a complaint to the Tribunal.

(4) In exercise of its civil jurisdiction, the Tribunal shall have the same powers vested in a Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908).

(5) In exercise of its criminal jurisdiction, the Tribunal shall have the same powers as are vested in the Court of Sessions under Code of Criminal Procedure , 1898 (Act No. V of 1898).

(6) In exercise of the appellate jurisdiction under section 23 the Tribunal shall have the same powers and shall follow the same procedure as an appellate Court in the Code of Civil Procedure , 1908 (Act No. V of 1908).

(7) The Tribunal shall in all matters with respect to which the procedure has not been provided for in this Act, follow the procedure laid down in the Civil Procedure Code, 1908 and the Code of Criminal Procedure, 1898.

(8) The Tribunal may, on application filed by any officer duly authorized in this behalf by the Director-General of the Agency, issue a bailable warrant for the arrest of any person against whom reasonable suspicion exists, of his having been involved in contravention punishable under sub-section (1) of section 18:

Provided that such warrant shall be applied for, issued and executed in accordance with the provisions of the Code of Criminal Procedure , 1898 (Act No.V of 1898):

Provided further that if the person arrested executes a bond with sufficient sureties in accordance with the endorsement on the warrant he shall be released from custody, failing which he shall be taken or sent without delay to the officer in-charge of the nearest police station.

(9) All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of section 193 and 228 of Pakistan Penal Code, 1860 (Act No. XLV of 1860), and the Tribunal shall be deemed to be a court for the purpose of section 480 and 482 of Code of Criminal Procedure, 1898 (Act No. V of 1898).

(10) No court other than the Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of the Tribunal extends under this Act and the rules made thereunder.

(11) All proceedings pending in the Tribunal established under the Pakistan Environmental Protection Act, 1997 (Act No. XXXIV of 1997), in respect of the Province of the Khyber Pakhtunkhwa, shall stand transferred to the Tribunals established and having jurisdiction under this Act. On transfer of proceedings under this sub-section, the parties shall appear before the Tribunal concerned on the date previously fixed.

(12) In respect of proceedings transferred under sub-section (11), the Tribunal shall proceed from the stage to which the proceedings had reached immediately prior to the transfer and shall not be bound to recall and re-hear any witness and may act on the evidence already recorded or produced before the Court from which the proceedings were transferred.

23. Appeals.--- (1) Any person aggrieved by any order or direction of the Agency under any provision of this Act, and rules made thereunder may prefer an appeal to Tribunal of competent jurisdiction within thirty days of the date of communication of the impugned order or direction to such person.

(2) An appeal to the Tribunal shall be in such form, contain such particulars and be accompanied by such fees as may be prescribed.

24. Appeals from orders of the Environmental Protection Tribunal.--- (1) Any person aggrieved by any final order or by any sentence of the Environmental Protection Tribunal passed under this Act may, within thirty days of communication of such order or sentence, prefer an appeal to the High Court.

(2) An appeal under sub-section (l) shall be heard by a Bench, duly constituted by the High Court.

25. Jurisdiction of Environmental Magistrates.--- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force, but subject to the provisions of this Act, all contravention punishable under sub-section (2) of section 18 shall exclusively be triable by a Judicial Magistrate of the First Class acting as Environmental Magistrate especially empowered in this behalf by the High Court.

(2) An Environmental Magistrate shall be competent to impose any punishment specified in sub-sections (2) and (4) of section 18 through a summary trial.

(3) An Environmental Magistrate shall not take cognizance of an offence triable under sub-section (1) except on a complaint in writing by---

(i) the Agency, or any government organization or a local council; and

(ii) any aggrieved person.

26. Appeals from orders of Environmental Magistrates.---Any person convicted of any contravention of this Act or the rules by an Environmental Magistrate may, within thirty days from the date of his conviction, appeal to the Court of Sessions whose decision thereon shall be final.

27. Power to give directions.--- Government shall give directions to the Agency in connection with the performance of its functions under this Act which shall be binding thereon.

28. Indemnity.--- No suit, prosecution or other legal proceedings shall lie against Government, the Council, the Agency, the Director-General of the Agency, members, officers, employees, experts, advisors, committees or consultants of the Agency or the Tribunal or Environmental Magistrate or any other person for anything which is in good faith done or intended to be done under this Act or its rules, notifications and guidelines made thereunder.

29. Dues recoverable as arrears of land revenue.---Any dues recoverable by the Agency under this Act, or under the rules made thereunder shall be recoverable as arrears of land revenue.

30. Act to override other laws.---The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

31. Power to make rules.--- Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act including rules for implementing the provisions of the International Environmental Agreements, specified in the SCHEDULE appended to this Act.

32. Power to amend the SCHEDULE.--- Government may, by notification in the official Gazette, amend the SCHEDULE so as to add any entry thereto or modify or omit any entry therein.

33. Removal of Difficulties.--- If any difficulty arises in giving effect to any provision of this Act, or rules and notifications made thereunder, Government may by notification, make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing such difficulty.

34. **Dress or uniform for the members of Agency.**--- Government may by notification approve specification of dress or uniform along with accessories for the enforcement staff of the Agency in a prescribed manner.

35. **Certain members of the Agency deemed to be Public Prosecutors.**---Certain members of the Agency, dealing with legal and enforcement affairs of the Agency, may be deemed to be public prosecutors and shall be competent to institute and conduct any proceedings in case sent up by the Agency for trial in the Tribunal.

36. **Adaption of laws, rules.**--- Government may adopt any law, rules, notifications and guidelines mutatis mutandis to realize the objective of this Act.

37. **Preventive actions.**---The members of the Agency entrusted with enforcement duties for prevention and control of pollution shall have the powers to take preventive actions in term of sections 149, 150 and 152 of the Code of Criminal Procedure, 1898 (Act No. V of 1898), in the prescribed manner.

38. **Cognizable offences.**---The offences specified in sub-section (1) of section 18, of this Act shall be cognizable to the extent of registration of case, arrest of the polluters / violators, taking action at site warranted to suspend or stop any illegal activity under the Act, rules made thereunder on a written report by any member of the Agency sent to the In-charge of Police Station concerned. The In-charge of the concerned local police station or post shall be duty bound to accompany, provide safety and security to the members of the Agency.

39. **Heads of accounts.**--- Administrative penalties or pollution charges or fine or fees or sums amount, except those specified in section 8, recoverable under this Act, rules made thereunder shall be separately managed to be deposited in public accounts of the Government.

40. **Repeal and saving.**--- (1) The Pakistan Environmental Protection Act, 1997 (Act No. XXXIV of 1997), is hereby repealed to the extent of its application to the Province of the Khyber Pakhtunkhwa.

(2) Notwithstanding the repeal of the aforesaid Act, any rules or appointments made, orders passed, notifications issued, powers delegated, contracts entered into, proceedings commenced, rights acquired, liabilities incurred, penalties, rates, fees or charges levied, things done or action taken under any provisions of that Act shall, so far as they are not inconsistent with the provisions of this Act be deemed to have been made, passed, issued, delegated, entered into, commenced, acquired, incurred, levied, done or taken under this Act.

(3) All properties, assets and liabilities pertaining to the Khyber Pakhtunkhwa Environmental Protection Agency, established under the Act so repealed shall be the properties, assets and liabilities, of the Agency established under this Act.

SCHEDULE
(see section 32)

1. International Plant Protection Convention, Rome, 1951.
2. Plant Protection Agreement for the South-East Asia and Pacific Region (as amended), Rome, 1956.
3. Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Eastern Region of its Distribution Area in South-West Asia (as amended), Rome, 1963.
4. Convention on Westlands of International Importance especially as Waterfowl Habitat, Ramsar, 1971 and its amending Protocol, Paris, 1982.
5. Convention Concerning the Protection of World Cultural and Natural Heritage (World Heritage Convention), 1972.
6. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, 1973.
7. Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979.
8. Convention on the Law of the Sea, Montego Bay, 1982.
9. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985.
10. Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987 and amendments thereto.
11. Agreement on the Network of Agriculture Centers in Asia and the Pacific, Bangkok, 1988.
12. Convention on the Control of Tran boundary Movements of Hazardous Waste and Their Disposal, Basel, 1989.
13. Convention on Biological Diversity, Rio de Janeiro, 1992.
14. United Nation Framework Convention on Climate Change, Rio De Janeiro, 1992.
15. United Nation Convention to Combat Desertification (UNCCD), Paris, 1994.
16. Kyoto Protocol to UNFCC, Kyoto, 1997.

17. Rotterdam Convention on Prior Informed Consent (PIC) for certain Hazardous Chemical and Pesticides in International Trade, Rotterdam, 1999.

18. Stockholm Convention on Persistent Organic Pollutants (POPs), Stockholm, 2001.

19. Cartagena Protocol on Bio-Safety to the CBD, Cartagena, 2001.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

(AMANULLAH)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

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Balochistan Environment Protection Act 2012

THE BALOCHISTAN ENVIRONMENT PROTECTION ACT

2012

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THE BALOCHISTAN ENVIRONMENT PROTECTION ACT, 2012

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[1] This Act was passed by the Provincial Assembly of Balochistan on 24th December, 2012; assented to by the Governor Balochistan on 9th January, 2013; and published in the Balochistan Gazette (Extraordinary) No. 7, dated 18th January, 2013.

[*18th January, 2013*]

An Act to provide for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development.Whereas, it is expedient to provide for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution, promotion of sustainable development, and for matters connected therewith and incidental thereto;

It is enacted as follows:—

Short title, extent and commencement.

1. (1) This Act shall be called the Balochistan Environmental Protection Act, 2012.

(2) It extends to the whole Province of Balochistan except Tribal Areas.

(3) It shall come into

2. In this Act unless there is anything repugnant in the subject or context,—

(a) "adverse environmental effect" means impairment of, or damage to, the environment and includes—

(i) human health and property or biodiversity, coast, beaches and ecosystem;

(ii) pollution; *and*

(iii) any adverse environmental effect on Land, Air and Water;

(b) "Agricultural waste" means waste from farm and agricultural Activities including poultry, cattle farming, animal husbandry residues from the use of fertilizers, pesticides and other farm chemicals;

(c) "Air pollutant" means any substance that causes pollution of air and includes soot, smoke, dust particles, odour, light, electro-magnetic, radiation, heat, fumes, combustion exhaust, exhaust gases, noxious gases, hazardous substances and radioactive substances;

(d) “Alien species” means a species that does not occur naturally in Balochistan.

(e) “Balochistan coastline or coastal zone” means the territorial jurisdiction of the coastline of the Province of Balochistan.

(f) “Best practicable environmental option” means the best method for preventing or minimizing adverse effects on the environment, having regard to, among other things:

(i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects;

(ii) the financial implications, and the effect on the environment, of that option when compared with other options; *and*

(iii) the current state of technical knowledge and the likelihood that the option can be successfully applied.

(g) "Biodiversity" or "biological diversity" means the variability among living organisms from all sources, inter alia terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species and of ecosystems;

(h) “Clinical waste” means any waste produced by hospitals, clinics, nursing homes, doctors offices, medical laboratories, medical research facilities and veterinarians which is infectious or potentially infectious.

(i) "Council" means the Balochistan

Environmental Protection Council established under section 3;

(j) "Discharge" includes spilling, leaking, pumping, depositing, seeping, releasing, flowing out, pouring, emitting, emptying or dumping;

(k) "Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non- living environment interacting as a functional unit;

(l) "Effluent" means any material in solid, liquid or gaseous form or combination thereof being discharged from industrial Activity or any other source and includes a slurry, suspension or vapor;

(m) “Electronic waste” means discarded computers, office electronic equipment, entertainment device electronics, mobile phones, television sets, Cathode ray tubes (CRT) and refrigerator, VCRs, stereos, copiers, and fax machines. It also includes used electronics which are destined for reuse, resale,

salvage, recycling, or disposal and electronic products nearing the end of their "useful life".

(n) "Emission standards" means the permissible standards established by the Provincial Agency for emission of air pollutants and noise and for discharge of effluent and waste;

(o) “Endemic and indigenous species” means a species which occurs naturally in the wild only in Balochistan, or a species which only breeds in the wild in Balochistan.

(p) "Environment" means—

(i) air, water and land;

(ii) all layers of the atmosphere;

(iii) all organic and inorganic matter and living organisms;

(iv) the ecosystem and ecological relationships;

(v) buildings, structures, roads, facilities and works;

(vi) all social and economic conditions affecting community life; *and*

(vii) the inter-relationships between any of the factors specified in sub-clauses (i) to (vi);

(q) "Environmental Impact Assessment" means an environmental study comprising

collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigation and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed;

(r) "Environmental Magistrate" means the Magistrate of the First Class appointed under Section 32;

(s) “Environmental Tribunal” means the Balochistan Environmental Protection Tribunal constituted under section 28;

(t) "Exclusive Economic Zone" shall have the same meaning as in the Territorial Waters and Maritime Zones Act, 1976[1] (LXXXII of 1976);

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[1] This Act was passed by the Parliament of Pakistan; assented by President on 31st December, 1976 and published in the Gazette of Pakistan (Extraordinary), Part I, dated 4th January, 1977.

(u) "Factory" means any premises in which industrial Activity is being undertaken;

(v) “Genetic Resource” means any material of plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.

(w) “Government” means the Government of Balochistan;

(x) "Government Agency" includes—

(i) a department, attached department, bureau, section, commission, board, office or unit of the Provincial Government;

(ii) a developmental or a local authority, company or corporation established or controlled by the Provincial Government;

(iii) the Balochistan Environmental Protection Agency; *and*

(iv) any other body defined and listed in the Rules of Business[1] of the Provincial Government.

(y) "Handling", in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, collection, destruction, conversion, offering for sale, transfer or the like of

such substance;

(z) "Hazardous substance" means—

(i) a substance or mixture of substances, other than a pesticide as defined in the Agricultural Pesticides Ordinance, 1971[2] (II of 1971), which, by reason of its chemical activity or toxic, explosive, flammable, corrosive, radioactive or other characteristics, causes, or is likely to cause, directly or in combination with other matters an adverse environmental effect; *and*

(ii) any substance which may be prescribed as a hazardous substance;

(aa) "Hazardous waste" means waste which is or which contains a hazardous substance or which may be

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[1] The Balochistan Government Rules of Business, 2012 issued by Services and General Administration Department vide its Notification No. S.O. (R-I)3(2)/2012-S&GAD/3096-3245 dated 14th December, 2012; published in the Balochistan Gazette (Extraordinary) No. 115, dated 14th December, 2012. Which repealed the earlier Balochistan Government Rules of Business, 1976, rule 49.

[2] This Ordinance was made by President of Pakistan on 22nd January, 1971; published in the Gazette of Pakistan (Extraordinary) dated 25th

January, 1971; and validated under Article 269 of the Constitution of the Islamic Republic of Pakistan, 1973.

prescribed as hazardous waste and includes hospital waste and nuclear waste;

(bb) "Historic waters" means such limits of the waters adjacent to the land territory of Pakistan as may be specified by notification under section 7 of the Territorial Waters and Maritime Zones Act, 1976[3] (LXXXII of 1976);

(cc) "Hospital waste" includes waste medical supplies and materials of all kinds, and waste blood, tissue, organs and other parts of the human and animal bodies, from hospitals, clinics and laboratories;

(dd) "Industrial activity" means any operation or process for manufacturing, making, formulating, synthesizing, altering, repairing, ornamenting, finishing, packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or for mining, for oil and gas exploration and development, or for pumping water or sewage, or for generating, transforming or transmitting power or for any other industrial or commercial purpose;

(ee) "Industrial waste" means waste resulting from an industrial activity;

(ff) "Initial Environmental

Examination" means a preliminary environmental review of the reasonably foreseeable qualitative and quantitative impacts on the environment of a proposed project to determine whether it is likely to cause an adverse environmental effect for requiring preparation of an environmental impact assessment;

(gg) “Integrated pollution control” means the holistic system aimed at pollution prevention and minimization at source, managing the impact of pollution and waste on the receiving environment and remediation of damaged and polluted environments.

(hh) “Living modified organism” means any living organism that possesses a novel combination of genetic material obtained through the use of modern technology.

(ii) "local authority" means regional or district set up of EPA or any Agency designated by the Provincial Government, by notification in the official Gazette, to

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[3] This Act was passed by the Parliament of Pakistan; assented by President on 31st December, 1976 and published in the Gazette of Pakistan (Extraordinary), Part I, dated 4th January, 1977.

be a local authority for the purposes of this Act;

(jj) "Local council" means a local council constituted or established under a law relating to local Government;

(kk) "Motor vehicle" means any mechanically propelled vehicle adapted for use upon land whether its power of propulsion is transmitted thereto from an external or internal source, and includes a chassis to which a body has not been attached, and a trailer, but does not include a vehicle running upon fixed rails;

(ll) "Municipal waste" includes sewage, refuse, garbage, waste from abattoirs, sludge and human excreta and the like;

(mm) "Environmental Quality Standards" means standards established by the Federal/Provincial Agencies under clause (e) of sub-section (1) of section 6 and approved by the Council under clause (c) of sub-section (1) of section 4;

(nn) "Noise" means the intensity, duration and character of sounds from all sources, and includes vibration;

(oo) "Nuclear waste" means waste from any nuclear reactor or nuclear plant or other nuclear energy system, whether or not such waste is radioactive;

(pp) "Person" means any natural person or legal entity and includes an individual, firm, association, partnership, society, group, company, corporation, co-operative society, Government Agency, non-governmental organization, community-based organization, village organization, local council or local authority and, in the case of a vessel, the master or other person having for the time being the charge or control of the vessel;

(qq) "Pollution" means the contamination of air, land or water by the discharge or emission of effluent or wastes or air pollutants or noise or other matter which either directly or indirectly or in combination with other discharges or substances alters unfavorably the chemical, physical, biological, radiation, thermal or radiological or aesthetic properties of the air, land or water or which may, or is likely to make the air, land or water unclean, noxious or impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to biodiversity;

(rr) "Prescribed" means prescribed by rules made under

this Act;

(ss) "Project" means any activity, plan, scheme, proposal or undertaking involving any change in the environment and includes—

(i) construction or use of buildings or other works;

(ii) construction or use of roads or other transport systems;

(ii) construction or operation of factories or other installations;

(iv) mineral prospecting, mining, quarrying, stone-crushing, drilling and the like;

(v) any change of land use or water use; *and*

(vi) alteration, expansion, repair, decommissioning or abandonment of existing buildings or other works, roads or other transport systems, factories or other installations;

(tt) "Protection of environment" means the qualitative and quantitative improvement of the different components of the environment and prevention of the deterioration of qualitative and quantitative standards;

(uu) "Proponent" means the person who proposes or intends

to undertake a project;

(vv) "Provincial Agency" means the Balochistan Environmental Protection Agency established under section 5, or any Government Agency, local council or local authority exercising the powers and functions of the Provincial Agency;

(ww) "Rules & Regulations" means rules and regulation made under this Act;

(xx) "Sewage" means liquid or semi-solid wastes and sludge from sanitary conveniences, kitchens, laundries, washing and similar activities and from any sewerage system or sewage disposal works;

(yy) “Ship breaking” means breaking up of various types of ship for recycling.

(zz) "Standards" means qualitative and quantitative standards for discharge of effluent and wastes and for emission of air pollutants and noise either for general applicability or for a particular area, or from a

particular production process, or for a particular product, and includes the Environmental Quality Standards, emission standards and other standards established under this Act and the rules and regulations;

(aaa) “Strategic Environmental Assessment” Strategic environmental assessment (SEA) is a system of incorporating environmental considerations into policies, plans, programmes and strategies. It is sometimes referred to as strategic environmental impact assessment.

(bbb) "Sustainable Development" means development that meets the needs of the present generation, without compromising the ability of future generations to meet their needs;

(ccc) “Sustainable Management” means management of the use of natural resources to provide for the health, safety and social, cultural and economic well being of people and communities taking into account the following:

(i) safeguarding the life supporting capacity of natural resources and ecosystems;

(ii) ensuring the maintenance of the life supporting capacity and quality of natural resources and ecosystems to

meet the reasonably foreseeable needs of future generations;

(iii) avoiding the creation of adverse effects and, where adverse effects cannot be avoided, mitigates and remedies adverse effects.

(ddd) "Territorial waters" shall have the same meaning as in the Territorial Waters and Maritime Zones Act, 1976[1] (LXXXII of 1976);

(eee) "Vessel" includes anything made for the conveyance by water of human beings or of goods; *and*

(fff) "Waste" means any substance or object which has been, is being or is intended to be, discarded or disposed of, and includes liquid waste, solid waste, waste gases, suspended waste, industrial waste, agricultural waste, nuclear waste, municipal waste, hospital waste, used polyethylene bags and residues

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[1] This Act was passed by the Parliament of Pakistan; assented by President on 31st December, 1976 and published in the Gazette of Pakistan (Extraordinary), Part I, dated 4th January, 1977.

from the incineration of all types of waste.

(ggg) "Water resource" includes surface water, an aquifer or ground water, a river or spring, a natural channel in which water flows regularly or intermittently, and a wetland, lake or dam into which, or from which, water flows.

Establishment of the Balochistan Environmental Protection Council.

3. (1) The Provincial Government shall, by notification in the official Gazette, establish a Council to be known as the Balochistan Environmental Protection Council consisting of—

(a)	Chief Minister or such other person as the Chief Minister may nominate in this behalf.	Chairperson
	Minister for Environment	Vice chairperson
(b)	Chief Secretary Balochistan	Member
(c)	Secretary Environment	Member / Secretary
(d)	Secretary Finance	Member
(e)	Secretary Industries	Member

(f)	Secretary Agriculture	Member	
(g)	Secretary Forest	Member	
(h)	Secretary P&D	Member	
(i)	Secretary S&GAD	Member	
(j)	Director General EPA	Member	
(k)	Such other persons not exceeding six (6) as the Provincial Government may appoint, with the following representation: One from the Balochistan Chamber of Commerce & Industries and one from the Balochistan Chamber of Agriculture, Two Environment experts/ Scientist, One Educationist and One from Non Governmental Organization.	Members	

(2) The Members of the Council, other than ex-officio

members, shall be appointed in accordance with the prescribed procedure and shall hold office for a term of two years.

(3) The Council may constitute committees of its members and entrust them with such functions as it may deem fit, and the recommendations of the committees shall be submitted to the Council for approval. The council or any of such committee may seek assistance from any Government Department or expert in the relevant environmental field in performance of its functions.

Functions and powers of the Council.

4. (1) The Council shall:—

(a) co-ordinate and supervise enforcement of the provisions of this Act;

(b) approve comprehensive environmental policies and ensure their implementation within the framework of a National /Balochistan conservation strategy as may be approved by the Federal/Provincial Government from time to time;

(c) approve the Environmental Quality Standards;

(d) provide guidelines for the protection and conservation of species, habitats, and biodiversity in general, and for the conservation of renewable and non-renewable resources.

(e) co-ordination of the principles and concerns of sustainable development into development plans and policies;

(f) The Council shall frame its own rules of procedure.

(g) The Council shall hold meetings, as and when necessary, but not less than two meetings, shall be held in a year.

(2) The Council may direct the Provincial Agency or any Government Agency to prepare, submit or implement projects for the protection, conservation, rehabilitation and improvement of the environment and the sustainable development of resources or to undertake research in any aspect of environment.

Establishment of the Balochistan Environmental Protection Agency.

5. (1) The Government of Balochistan shall by a notification in the official Gazette establish Balochistan Environmental Protection Agency to exercise the powers and perform the functions assigned to it under this Act and the rules and regulations made there under.

(2) The Balochistan Environmental Protection Agency shall be headed by a Director-General who shall be appointed by the Government of Balochistan on such terms and conditions as it may determine.

(3) The Balochistan Environmental Protection Agency shall have such administrative, technical and legal staff, as the Government of Balochistan may specify, to be appointed in accordance with Balochistan Civil Servant Act 1974[1].

(4) The powers and functions of the Balochistan Environmental Protection Agency shall be exercised and performed by the Director-General.

(5) The Director-General may, by general or special order, delegate any of the powers and functions to staff appointed under sub-section (3).

(6) For assisting the Balochistan Environmental Protection Agency in the discharge of its functions the Government of Balochistan shall establish Advisory Committees for various sectors and appoint as members thereof representatives of the relevant sector, educational institutions and non-governmental organizations.

Functions of the Balochistan Environmental Protection Agency.

6. (1) The Balochistan Environmental Protection Agency shall—

(a) administer and implement this Act and the rules and regulations made thereunder;

(b) prepare, in co-ordination with the relevant

Government Agency and in co		nsultation with the concerned sectors Advisory Committees, environmental policies for approval by the Council;
	(c)	take all necessary measures for the implementation of the national environmental policies approved by the Council;
	(d)	prepare and publish an Annual Environment Report on the state of the environment;
	(e)	establish standards for the quality of the ambient air, water and land, by notification in the official Gazette in consultation with the other relevant Government Departments/ Agencies.
	(f)	Revise the Environmental Quality Standards

[1] Balochistan Act IX of 1974; passed by the Balochistan Assembly on 19th June, 1974; assented to by the Governor of Balochistan; and published in the Balochistan Gazette (Extraordinary) No. 41, dated 20th July, 1974.

with approval of the Council:

Provided that

(i) before seeking approval of the Council, the Balochistan Environmental Protection Agency shall publish the proposed Environmental Quality Standards for public opinion in accordance with the prescribed procedure;

(ii) different standards for discharge or emission from different sources and for different areas and conditions may be specified; where standards are less stringent than the Environmental Quality Standards prior approval of the Council shall be obtained;

(iii) certain areas, with the approval of the Council, may exclude from carrying out specific activities, projects from the application of such standards;

(g) co-ordinate environmental policies and programmes;

(h) establish systems and procedures for surveys,

monitoring, measurement, examination, investigation, research, inspection and audit to prevent and control pollution, and to estimate the costs of cleaning up pollution and rehabilitating the environment in various sectors;

(i) take measures to promote research and the development of science and technology which may contribute to the protection of the environment, and sustainable development;

(j) certify one or more laboratories as approved laboratories for conducting tests and analysis and one or more research institutes as environmental research institutes for conducting research and investigation for the purposes of this Act;

(k) initiate legislation in various sectors of the environment;

(l) render advice and assistance in environmental matters including such information and data available with it as may be required for carrying out the purposes of this Act:

Provided that the disclosure of such information shall be subject to the restrictions contained in the proviso to sub- section (3) of section 15;

(m) assist the local councils, local authorities, Government Agencies and other persons to implement schemes for the proper disposal of wastes so as to ensure compliance with the standards established by it;

(n) provide information and guidance to the public on environmental matters;

(o) recommend environmental courses, topics, literature and books for incorporation in the curricula and syllabi of educational institutions;

(p) promote public education and awareness of environmental issues through mass media and other means including seminars and workshops;

(q) specify safeguards for the prevention of accidents and

disasters which may cause pollution, collaborate with the concerned person in the preparation of contingency plans for control of such accidents and disasters, and co-ordinate implementation of such plans;

(r) encourage the formation and working of non-governmental organizations, community organizations and village organizations to prevent and control pollution and promote sustainable development;

(s) perform any function which the Council may assign to it.

(2) The Balochistan Environmental Protection Agency may —

(a) undertake inquiries or investigation into environmental issues, either of its own accord or upon complaint from any person or

organization;

(b) request any person to furnish any information or data relevant to its functions;

(c) initiate with the approval of the Provincial/ Federal Government, requests for foreign assistance in support of the purposes of this Act and enter into arrangements with foreign agencies or organizations for the exchange of material or information and participate in international seminars or meetings;

(d) recommend to the Government of Balochistan the adoption of financial and fiscal programmes, schemes or measures for achieving environmental objectives and goals and the purposes of this Act, including—

(i) incentives, prizes awards, subsidies, tax exemptions, rebates and depreciation allowances; *and*

(ii) taxes, duties and other levies;

(e) establish and maintain laboratories to help in the performance of its functions under this Act and to

conduct research in various aspects of the environment and provide or arrange necessary assistance for establishment of similar laboratories in the private sector;

(f) provide or arrange, in accordance with such procedure as may be prescribed, financial assistance for projects designed to facilitate the discharge of its functions.

Powers of the Balochistan Environmental Protection Agency.

7. Subject to the provisions of this Act, the Balochistan Environmental Protection Agency may

(a) lease, purchase, acquire property both moveable and immovable;

(b) fix and realize fees, rates and charges for rendering any service or providing any facility, information or data under this Act or the rules and regulations;

(c) enter into contracts, execute instruments subject to approval of the Provincial Government, necessary for proper management and conduct of its business made thereunder;

(d) subject to approval of the Provincial Government

appoint in accordance with prescribed procedures such experts and consultants as it considers necessary for the efficient performance of its functions on appropriate terms and conditions;

(e) summon and enforce the attendance of any person and require him to supply any information or document needed for the conduct of any enquiry or investigation into any environmental issue;

(f) The Director General Balochistan EPA or any other Regional officer specifically authorized in this behalf by the Director General shall have the power to impose fine/administrative penalty up to rupees one hundred thousand from case to case basis.

(i) the fine/administrative penalty shall be recovered as per land revenue Act[1].

(ii) the fine/administrative penalty initially or for an interim period shall be placed with the Balochistan EPA till the decision of the Environmental Tribunal or Magistrate; *and*

(iii) the fine/administrative penalty after the final decision shall be deposited in the public exchequer.

(g) enter and inspect and under the authority of a search warrant issued by the Environmental Court or Environmental Magistrate, search at any reasonable time, any land, building, premises, vehicle or vessel or other place where or in which, there are reasonable grounds to believe that an offence under this Act has been, or is being, committed;

(i) Subject to the provisions of this Act, any person generally or specifically authorized in this behalf by the Director General shall be entitled to enter, at all reasonable times, with such assistance as he considers necessary, any building or place for the following purposes, namely:—

a) to perform duties conferred on him under this Act or rules;

b) to inspect any activity in such building or place in accordance with this Act, the rules or any notice,

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[1] That is W.P. Act XVII of 1967, published in the W.P. Gazette (Extraordinary), dated 7 th December, 1967, pages 3603-3656; adopted by Balochistan Laws (Adaptation) Order, 1975, with

substitution of the word “Balochistan” for the words “West Pakistan”.

order or direction issued thereunder;

c) to examine or test any equipment, industrial plant, record, register or any other important matter relating thereto;

d) to conduct a search of any building or place which the said person has reason to believe to have been the place of occurrence of any offence in contravention of any notice, order or direction issued under this Act or the rules;

e) to seize/close any equipment, industrial plant, record, register, document or other matter which may serve as evidence of the commission of any offence punishable under this Act or the rules.

(ii) The provisions of the Code of Criminal Procedure[1] shall be applicable in respect of any search or seizure under this Act.

(a) take samples of any materials, products, articles or substances or of the effluent, wastes or air pollutants

being discharged or emitted or of air, water or land in the vicinity of the discharge or emission;

(b) arrange for test and analysis of the samples at a certified laboratory;

(i) Every person authorized in this behalf by the Director General may, in such manner as may be prescribed by rules, collect from any factory, premises or place samples of air, water, soil or of any other substance for the purpose of analysis.

(ii) The results of the analysis of samples collected under clause (i) shall not be admissible in evidence in any legal proceeding unless

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[1] That is Act V of 1898.

the provisions of the clauses (iii) and (iv) have been complied with.

(iii) Subject to the provisions of sub-section (4), the officer collecting a sample under clause (i) shall—

(a) serve notice on the owner or proponent or agent of the said place, in such manner as may be prescribed by rules, of his intention to collect such sample;

(b) collect the sample in the presence of the said occupier or agent;

(c) put the sample into a container and affix on it a seal bearing the signatures of himself and of the occupier or agent;

(d) prepare a report of the sample collected and sign it himself and take the signature of the occupier or agent;

(e) send without any delay, the said container to the laboratory specified by the Director General EPA.

(iv) Where a sample is collected

under clause (i) and a notice is served by the collecting officer under sub clause a) of clause (iii), the collecting officer shall, if the occupier or agent willfully absents himself at the time of the collection of the sample or, though being present, refuses to sign the sample or report, in the presence of two witnesses, give his signature and attest and seal it and shall send it without any delay to the laboratory specified by the Director General, mentioning that the occupier or agent had not been present or, as the case may be, refused to give his signature.

(i) confiscate any article used in the commission of the offence where the offender is not known or cannot be found within a reasonable time:

Provided that the power under clauses (f), (h), (I) and (j) shall be exercised in accordance with the provisions of the Code of Criminal Procedure, 1898

(Act V of 1898), or the rules made under this Act and under the direction of the Environmental Tribunal or Environmental Magistrate; *and*

(j) establish an Environmental Co-ordination Committee comprising the Director- General as its chairman and the heads of relevant Government Agencies and such other persons as the Government of Balochistan may appoint as its members to exercise such powers and perform such functions as may be delegated or assigned to it by the Government of Balochistan for carrying out the purposes of this Act and for ensuring inter departmental co-ordination in environmental policies.

Establishment, powers and functions of the Regional or District Environmental Protection Agencies.

8. (1) Government of Balochistan shall, by notification in the official Gazette, establish the Regional or District Environmental Protection Agency, to exercise such powers and perform such functions as may be delegated to it by the Government of Balochistan under sub-section (2) of section 34.

(2) The Regional or District Environmental Protection Agency shall be headed by an officer at least of the rank of regional Director or Deputy Director who shall be appointed by the Provincial Government on such terms and conditions as prescribed in the Balochistan Civil

Servant Act 1974[1].

may specify, to be appointed in accordance with the Balochistan Civil Servants Appointment, Promotion and Transfers Rules 2009[2] such procedure as may be prescribed.

(3) The Regional or District Environmental Protection Agency shall have such administrative, technical and legal staff as the Government of Balochistan

(4) The powers and functions of the Regional or District Environmental Protection Agency shall be exercised and performed by an Officer of the rank of regional Director or Deputy Director appointed as head.

(5) The Director General may, by general or special order, delegate any of the powers and functions to staff appointed under sub-section (3).

Establishment of the Balochistan Sustainable Development Funds.

9. (1) There shall be established in the Province a Balochistan Sustainable Development Fund.

(2) The Balochistan Sustainable Development Fund shall be derived from the following sources, namely:—

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[1] Balochistan Act IX of 1974; passed by the Balochistan Assembly on 19th June, 1974; assented to by the Governor of Balochistan; and published in the Balochistan Gazette (Extraordinary) No. 41 dated 20th July, 1974.

[2] Rules issued by the Services and General Administration Department, Government of Balochistan; and published in the Balochistan Gazette (Extraordinary) No. 165, dated 27th October, 2009.

(a) grants made or loans advanced by the Federal Government or the Provincial Government;

(b) aid and assistance, grants, advances, donations and other non-obligatory funds received from foreign governments, national or international agencies, and non- governmental organizations; *and*

(c) contributions from private organizations and other persons.

(3) The Balochistan Sustainable Development Fund shall be utilized in accordance with such procedure as may be prescribed for—

(a) providing financial assistance to the projects in the public/private sector designed for the protection, conservation, rehabilitation and improvement of the environment, the prevention and control of pollution, the sustainable development of resources and for research in any aspect of environment; *and*

(b) any other purpose which in the opinion of the Board shall help to achieve environmental objectives and the purposes of this Act.

Management of the Balochistan Sustainable Development Fund.

10. (1) The Balochistan Sustainable Development Fund shall be managed by a Board known as the Sustainable Development Fund Board consisting of:—

(i)	Secretary Environment Department	Chairperson
(ii)	Secretary Industries Department	Member
(iii)	Secretary Social Welfare Department	Member
(iv)	Secretary Finance Department	Member
(v)	Secretary Forest Department	Member
(vi)	Secretary Agriculture Department	Member
(vii)	such non-official persons not exceeding six (6) as the Members Government of	

stan may appoint including two (2)	Members

	representatives of the Balochistan Chamber of Commerce and Industry, two (2) representatives of the Balochistan Chamber of Agriculture and two (2) representative of leading non-governmental organizations/ donors.	
(viii)	Director General, Balochistan Environmental Protection Agency	Member/ Secretary

(2) the Board shall have the power to—

(a) sanction financial assistance for eligible projects; as specified in section 9(3) of this Act

(b) invest moneys held in the Balochistan Sustainable Development Fund in such profit- bearing Government bonds, savings schemes and securities as it may

deem suitable; *and*

(3) The Board shall constitute committees of its members to undertake regular monitoring of projects financed from the Balochistan Sustainable Development Fund and to submit progress reports to the Board which shall publish an Annual Report incorporating its annual audited accounts and performance evaluation based on the progress reports.

(4) Audit of the fund shall be conducted on annual basis.

Inter-Provincial Environmental issues.

11. (1) The project falling within the geographical jurisdiction of two or more Provinces, the IEE or EIA may be submitted by the proponent to each Provincial Environmental Agencies for review and approval.

(2) In case of any dispute or concerns the matter shall be settled through mutual consultation of the Provinces to avoid any inconveniences or future litigation.

(3) The concerned Provinces may constitute a joint technical or review committee including a representative of the concerned Federal Ministry dealing with Environment and coordination.

Multilateral Environmental Agreements.

12. (1) The obligation of the International Conventions, Treaties and Protocols shall be observed as before devolution of the subject of Environment to the Province on Environment or climate change. In case of any international/ bilateral cooperation, the matter

shall be proceeded with consultation with the concerned Federal Ministries.

(2) The Government of Balochistan/ Environmental Protection Agency shall extend support to those obligation of the International Conventions, Treaties and Protocols where adequate assistance provided by the Federal Government.

Strategic Environment Assessment (SEA).

13. (1) This section regulates the conditions, methods and procedure according to which the assessment of impact of certain plans and programmes on the environment (hereinafter referred to as: strategic assessment) shall be carried out in order to provide for the environmental protection and improvement of sustainable development through integration of basic principles of environmental protection into the procedure of preparation and adoption of plans and programmes.

(2) The Government at all levels of administration and in every sector shall incorporate environmental considerations into policies, plans, programmes and strategies.

Prohibition of certain discharges or emissions and potential harmful items or materials.

14. (1) Subject to the provisions of this Act and the rules and regulations no person shall discharge or emit or allow the discharge or emission of any effluent or waste or air pollutant or noise in an amount, concentration or level or is likely to cause, a significant adverse effect on the environment or human health which is in excess of the Environmental Quality Standards or, where applicable, the standards established under

sub-clause (ii) of clause (f) of section 6.

(2) The Government of Balochistan shall not allow any imported or locally made commodities or items or materials or equipment or instruments or automobile or pesticides etc, into its provincial jurisdiction which may have any potential of causing Environmental problems.

(3) No person or company related to public and private sector shall introduce any of the imported or locally made items or materials or equipment or instruments or automobile or pesticides etc as per sub-section (2) for any purpose unless it has filed an application to the Balochistan Environmental Protection Agency, as the case may be, and has obtained approval from the Government Agency in respect thereof.

(4) The Government of Balochistan may levy a pollution charge on any person who contravenes or fails to comply with the provisions of sub-section (1), to be calculated at such rate, and collected in accordance with such procedure as may be prescribed.

(5) Any person who pays the pollution charge levied under sub-section (2) shall not be charged with an offence with respect to that contravention or failure.

(6) The approved license in terms of section 15 of this Act does not affect the applicant's duty to obtain any other authorization required in order to undertake the Activity or implement the project concerned, whether in terms of this Act or any other legislation.

(7) A person/ firm causing discharge of pollutants shall take all reasonable measures to ensure that the best practicable environmental option is adopted in relation to the discharge of emission and conservation of the environment.

Initial Environmental Examination and Environmental Impact Assessment.

15. (1) No proponent of a project of public and private sector shall commence construction or operation unless he has filed an Initial Environmental Examination with the Government Agency designated by Balochistan Environmental Protection Agency, as the case may be, or, where the project is likely to cause an adverse environmental effects an environmental impact assessment, and has obtained from the Government Agency approval in respect thereof.

(2) The Government Agency shall subject to standards fixed by the Balochistan Environmental Protection Agency—

(a) review the initial environmental examination and accord its approval, or require submission of an environmental impact assessment by the proponent; or

(b) review the environmental impact assessment or accord its approval subject to such conditions as it may deem fit to impose, require that the environmental impact assessment be re-submitted after such modification as may be stipulated or reject the project as being contra to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to—

(i) trade, manufacturing or business Activities, processes or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reasons to be recorded in writing, the Director General of the Balochistan Environmental Protection Agency is of the opinion that the request for confidentiality is not well-

founded or the public interest in the

disclosure outweighs the possible prejudice to the competitive position of the project or its proponent; *or*

(ii) international relations, national security or maintenance of law and order, except with the consent of the Government of Balochistan; *or*

(iii) matters covered by legal professional privilege.

(4) The Government Agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules and regulations.

(5) Subject to sub-section (4) the appropriate Government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.

(6) The provisions of sub-sections (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed.

(7) The Government Agency shall maintain separate registers for initial

environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such registers shall be subject to the restrictions specified in sub-section (3).

(8) No concession areas for any developmental activities shall be awarded to any International/National groups or firms without consultation and concurrence of the Government of Balochistan/ Environmental Protection Agency.

(9) The prospect licenses for mining, quarrying, crushing etc. shall only be awarded/ granted in compliance with the sub section (1), (2), (3), (4) and (5).

(10) The cellular companies shall obtain environmental approval from the Balochistan EPA before installing Base Transceivers Station (BTS).

(11) BTS Stations should be required to undergo routine evaluation for Compliance. Whenever an application is submitted to

the Balochistan EPA for construction or modification of a transmitting facility. EPA shall have the authority to take action if a cellular base station antenna does not comply with the International Commission on Non-Ionizing Radiation Protection (ICNIRP) Guidelines and recommendations of the report titled 'Environmental and Health Related Effects of the Cellular Base Station Antennas' carried out by IT and Telecom Division, Ministry of Information Technology.

(12) No person or company related to public and private sector shall commence construction or operation unless the concerned building authority accord approval under the provisions of the in vogue Building Code.

(13) After fulfilling the sub section (12) an action plan shall be submitted to the concerned municipal/town/union council to carry out the activities for a specific time period as to provide the general public or road users an alternative corridor.

(14) The waste generated during the construction or maintenance or repair of any building shall be appropriately disposed of or transported or collected to a designated place allocated for the purpose like any land fill site to avoid public nuisance.

(15) The construction or repair activities especially in the main city area shall be carried out in a manner to minimize the road congestion or blockage.

(16) The proponent of the project shall remit fifty thousand rupees as review fee of an Initial Environmental Examination (IEE) and one hundred thousand as review fee for Environmental Impact Assessment (EIA).

(17) The person or company in public

or private sector intend to commence any scheme or project do not falling under schedule I and II of regulation to this Act shall remit twenty five thousand rupees as an Environmental approval fee to the Balochistan Environmental Protection Agency.

Prohibition of import of hazardous waste.

16. No person shall import hazardous waste into Balochistan and its jurisdiction limits.

Handling of hazardous substances and License.

17. (1) Subject to the provisions of this Act, no person shall generate, collect, consign, transport, treat, dispose of, store, handle or import any hazardous substance except—

(a) under a license issued by the Government of Balochistan and in such manner as may be prescribed; *or*

(b) in accordance with the provisions of any other law for the time being in force, or of

any international treaty, convention, protocol, code, standard, agreement or other instrument to which Pakistan is a party.

(2) Every owner or proponent of any land or premises on which hazardous waste is kept, treated or disposed of shall make a written application to the Balochistan Environmental Protection Agency for a hazardous waste management license, which shall at least include details of:

(a) the chemical composition, nature and volume of the waste which is being, or will be, produced;

(b) the industrial process, trade or activity giving rise to the waste;

(c) the way in which the applicant proposes to keep, treat or dispose of the hazardous waste, including storage and handling procedures;

(d) the precautions which will be taken to avoid any adverse effects on the environment being caused by the hazardous waste.

(3) The Balochistan Environmental Protection Agency shall evaluate each application for a license under this Article in the following manner:

(a) grant a hazardous waste management license, with or

without conditions, if satisfied that the proposed method of keeping, treating and disposing of the hazardous waste will not cause any adverse effects; *or*

(b) refuse to grant a license giving reasons for the refusal in writing to the applicant.

(4) The Balochistan Environmental Protection Agency would take a decision in regard to sub-section (2) within thirty (30) days of the date of lodging of the application for a license.

(5) The license shall be granted for a reasonable period not exceeding five years. On expiry of the license for renewal same procedure shall be followed.

ronic Wastes. 18. (1) Every producer, distributer, collection centre, refurbisher, dismantler or recyclers shall store the electronic waste for a period not exceeding six months and shall maintain a record of collection, sale, transfer, storage and segregation of wastes and make these records available for inspection:

Provided that the Balochistan Environmental Protection Agency may extend the said period in following cases,

namely:

(a) Dismantlers and Recyclers up to six months of their annual storage capacity of the owner; *or*

(b) Collection centers who do not have access to any registered dismantling or recycling facility; *or*

(c) the waste which needs to be specifically stored for development of a process for its recycling, reuse.

(2) Every producer, distributer, collection centre, refurbisher, dismantler or recyclers shall make arrangements for the environmentally sound management and disposal of electronic waste.

(3) The 'environmentally sound management of electronic waste' as "taking all steps required to ensure that electronic waste are managed in a manner which shall protect health and environment against any adverse effects, which may result from hazardous substance contained in such wastes".

(4) The provisions of this section shall apply to every producer, consumer and bulk consumer involved in manufacture, sale, purchase and processing of electronic equipment or components.

(5) Information dissemination on electronic waste and the environmentally sound management of electronic waste is also mandated from producers.

(6) To regulate the provisions of this section all the relevant international conventions, protocols and treaties collectively called as multilateral environmental agreements (MEAs) shall be applicable where Pakistan is signatory or ratified the MEAs.

(7) Any person or company or unit who contravenes or fails to comply with the provisions of the above sub-sections shall be imposed penalty under section 25 of this Act.

General Prohibition in relation to Solid and Hospital Waste management and Waste Management License.

19. (1) No person may collect, transport, sort, recover, store, dispose of or otherwise manage waste in a manner that results in a significant adverse effect.

(2) Every person who imports, produces, collects, recovers, transports, keeps, treats or disposes of waste shall take all reasonable measures to prevent a significant adverse effect on the environment from occurring.

(3) The owner or proponent of every premises upon which solid and hazardous hospital waste is produced shall ensure that all hazardous waste whether solid or hospital waste is separated from other waste, and is stored in separate containers pending

disposal, in accordance with the requirements of the Balochistan Environmental Protection Agency as set out in regulations, published guidelines or license conditions.

(4) A person shall not dispose of solid and hazardous hospital waste in such a manner that it becomes litter or is likely to become litter.

(5) Unless in possession of a valid waste management license issued by the Balochistan Environmental Protection Agency, no person may construct, own or operate a landfill site, incinerator or other facility at which waste is permanently disposed of or is stored indefinitely.

(6) The Balochistan Environmental Protection Agency shall evaluate each application for a license and shall do the following:

a) grant a license if the Balochistan Environmental Protection Agency is satisfied that the applicant has sufficient expertise to undertake the activity in question in accordance with the law and in a manner that will not have significant adverse effects; *or*

b) refuse to grant a license giving reasons for the refusal in writing to the applicant.

(7) The Balochistan Environmental Protection Agency shall reach a decision in regard to sub-section (2) within thirty (30) days of the date of lodging of the application for a license with the Balochistan

Environmental Protection Agency.

(8) If there are reasonable grounds to grant license, and those grounds are communicated to the license holder in writing, the Balochistan Environmental Protection Agency may amend, revoke or impose new conditions in an existing waste management license.

(9) The license granted under sub-section (6) shall be subject to review if condition of license granted are not fulfilled.

Management of Water Resources.

20. (1) All persons, for the purpose of protection, conservation, development, use, control and management of water resources, would take into account the following measures:

a) protecting aquatic and associated ecosystems and their biological diversity;

b) reducing and preventing pollution and degradation of water resources.

(2) When preparing water resource management plans, Departments and other relevant institutions shall at least take the following into account:

(a) provisions for integrated watershed management;

(b) regulation of sustainable abstraction of groundwater;

(c) regulation of the use of ground or surface water for agricultural, industrial, mining, and urban purposes;

(d) measures to protect human health and ecosystems;

(e) measures to protect wetlands and their associated ecosystems;

(f) any other provision necessary for the sustainable use and management of water resources.

(3) An owner of land or a person who uses the land on which any activity or process is performed or undertaken which causes or is likely to cause significant pollution of a water resource must take measures to prevent any such pollution.

Regulation of motor vehicles.

21. (1) Subject to the provisions of this Act, and the rules and regulations, no person shall operate a motor vehicle from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the Environmental Quality Standards, or where applicable the standards established under clause (e) of section 6 (1).

(2) For ensuring compliance with the standards mentioned in sub-section (1), the Balochistan Environmental Protection

Agency may direct that any motor vehicle or class of vehicles shall install such pollution control devices or other equipment or use such fuels or undergo such maintenance or testing as may be prescribed.

(3) Where a direction has been issued by the Government Agency under sub-section (2) in respect of any motor vehicles or class of motor vehicles, no person shall operate any such vehicle till such direction has been complied with.

(4) To regulate the provision of this Act a green squad comprising of representative of Traffic Police, Motor Vehicle Examiner, Excise & Taxation and EPA Balochistan shall be in place to monitor and inspect the automobiles running on the road as per the Environment Quality Standard.

(5) The inspection or monitoring shall be carried out at least once in a month wherein a mechanism be chalked out for issuance of warning tickets (red: Highly polluted, Blue: less polluted) on a prominent on the vehicle, as the case may be for specific period

of time not exceeding 30 days to maintain the vehicle in order.

(6) Whoever contravenes or fails to comply with the provision of sub-section (5) such vehicle should be made off road or punishable with fine at least twenty thousand rupees which may be extended to one hundred thousand rupees. In the case of continuing contravention or failure the vehicle shall be impounded.

Alien Species and Living Modified Organisms.

22. (1) The import into Balochistan of alien species and of living modified organisms is prohibited without a permit issued by the relevant authority under any law enforce in Balochistan. The Balochistan Environmental Protection Agency in consultation with the Departments of Agriculture, Livestock and Animal Husbandry and Food shall monitor the matter.

(2) No permit for the introduction of an alien species or of a living modified organism shall be issued unless the environmental impact indicates that there is a reasonable certainty that no harm to indigenous natural resources or human health will result from the proposed introduction.

(3) Sub-section 1 and 2 of this Section shall apply equally to introductions of alien species and living modified organisms into the Province of Balochistan and to introductions from one ecosystem to another within the province.

(4) The introduction of alien species and living modified organisms into protected areas shall not be allowed.

tal Zone. 23. (1) Subject to the provisions of this Act the activities or concentration or level of discharges of the following units established on onshore and offshore shall be monitored strictly to prevent the pollution and environmental degradation caused by the following multi-magnitude and multi disciplinary units.

(a) Ports and shipping

(b) Fisheries

(c) Ship dismantling

(d) Shipping Traffic (Oil Tankers & Vessels) & dredging.

(e) Oil and gas mineral exploration.

(f) Coastal power plants and Energy sector.

(g) Oil refineries and Industries

(2) The ship breaking at Gaddani or anywhere else in the coastal belt/zone of this province shall be subject to fulfilling all the relevant obligations under the Basel Convention "on the Control of Trans-boundary Movements of Hazardous Waste and their Disposal", Rotterdam Convention "on the prior Informed Consent (PIC)

Procedure for certain Hazardous Chemicals and Pesticides in International Trade" and other relevant Treaties/Protocols and provisions of this Act.

(3) During the process of ship breaking/ dismantling the waste, hazardous waste or sludge or Polychlorinated biphenyls or asbestos etc, shall be disposed of in a manner to ensure Protection of Terrestrial and Marine environment.

(4) The activities of ship breaking/ dismantling activities on shore or offshore within territorial limit of Balochistan shall be monitored at least biannually to ensure environmental protection and prevent degradation and pollution.

(5) The disposal of untreated sewage and domestic wastes and untreated disposal of industrial effluents into the sea is an offence any person or company or unit who contravenes or fails to comply with the provisions of this Act shall face to penalty under section 25.

Environmental protection order.

24. (1) Where the Balochistan Environmental Protection Agency is satisfied that the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substances, or any other act or omission is likely to occur, or is occurring, or has occurred, in violation of the provisions of this Act, rules or regulations or of the conditions of a license, and is likely to cause, or is causing or has caused an adverse environmental effect, the Balochistan Environmental Protection Agency may, after giving the person

responsible for such discharge, emission, disposal, handling, Act or omission an opportunity of being heard, by order direct such person to take such measures that the Balochistan Environmental Protection Agency may consider necessary within such period as may be specified in the order.

(2) In particular and without prejudice to the generality of the foregoing power, such measures may include—

(a) immediate stoppage, preventing, lessening or controlling the discharge, emission, disposal, handling, act or omission, or to minimize or remedy the adverse environmental effect;

(b) installation, replacement or alteration of any equipment or thing to eliminate, control or abate on a permanent or temporary basis, such discharge, emission, disposal, handling, act or omission;

(c) action to remove or otherwise dispose of the effluent, waste, air pollutant, noise, or hazardous substances; *and*

(d) action to restore the environment to the condition existing prior to such discharge, disposal, handling, act or omission, or as close to such condition as may be reasonable in the circumstances, to the satisfaction of the Balochistan Environmental Protection Agency.

(3) Where the person, to whom directions under sub- section (1) are given, does not comply therewith, the Balochistan Environmental Protection Agency may, in addition to the proceedings initiated against him under this Act, the rules and regulations, itself take or cause to be taken such measures specified in the order as it may deem necessary and may recover the reasonable costs of taking such measures from such person as arrears of land revenue.

ties. 25. (1) Whoever contravenes or fails to comply with the provisions of sections 14, 15, 16, 18 or section 24 or any order issued there-under shall be punishable with fine which may extend to one million rupees, and in the case of a continuing contravention or failure, with an additional fine which may extend to one hundred thousand rupees for every day during which such contravention or failure continues:

Provided that if contravention of the provisions of section 14 also constitutes contravention of the provisions of section 21, such contravention shall be punishable under sub-section (2) only.

(2) Whoever contravenes or fails to comply with the provisions of section 17, 19, 21, 22 or 23 or any rule or regulation or

conditions of any license, any order or direction, issued by the Council or the Balochistan Environmental Protection Agency, shall be punishable with fine which may extend to one hundred thousand rupees, and in case of continuing contravention or failure with an additional fine which extend to one thousand rupees for every day during which such contravention continues.

(3) Where an accused has been convicted of an offence under subsections (1) and (2), the Environmental Court and Environmental Magistrate, as the case may be, shall, in passing sentence, take into account the extent and duration of the contravention or failure constituting the offence and the attendant circumstances.

(4) Where an accused has been convicted of an offence under sub-section (1) and the Environmental Court is satisfied that as a result of the commission of the offence monetary benefits have accrued to the offender, the Environmental Court may order the offender to pay, in addition to the fines under sub-section (1), further additional fine commensurate with the amount of the monetary

benefits.

(5) Where a person convicted under sub-sections (1) or sub-section (2) had been previously convicted for any contravention under this Act, the Environmental Court or, as the case may be, Environmental Magistrate may, in addition to the punishment awarded thereunder—

(a) endorse a copy of the order of conviction to the concerned trade or industrial association, if any, or the concerned Provincial Chamber of Commerce and Industry or the Federation of Pakistan Chambers of Commerce and Industry;

(b) sentence him to imprisonment for a term which may extend to two years;

(c) order the closure of the factory;

(d) order confiscation of the factory, machinery, and equipment, vehicle, material or substance, record or document or other object used or involved in contravention of the provisions of the Act:

Provided that for a period of three years from the date of commencement of this Act the sentence of imprisonment shall be

passed only in respect of persons who have been previously convicted for more than once for any contravention of sections 14, 16, 17, 18, 19 or 24 involving hazardous waste;

(e) order such person to restore the environment at his own cost, to the conditions existing prior to such contravention or as close to such conditions as may be reasonable in the circumstances to the satisfaction of the Balochistan Environmental Protection Agency; *and*

(f) order that such sum be paid to any person as compensation for any loss, bodily injury, damage to his health or property suffered by such contravention.

(6) The Director-General of the Balochistan Environmental Protection Agency or an officer generally or specially authorized by him in this behalf may, on the application of the accused compound an offence under this Act with the permission of the Environmental Tribunals or Environmental Magistrate in

accordance with such procedure as may be prescribed.

(7) Where the Director-General of the Balochistan Environmental Protection Agency is of the opinion that a person has contravened any provision of Act he may, subject to the rules, by notice in writing to that person require him to pay to the Balochistan Environmental Protection Agency an administrative penalty in the amount set out in the notice for each day the contravention continues; and a person who pays an administrative penalty for a contravention shall not be charged under this Act with an offence in respect of such contravention.

(8) The provisions of sub-sections (6) and (7) shall not apply to a person who has been previously convicted of offence or who has compounded an offence under this Act who has paid an administrative penalty for a contravention of any provision of this Act.

Offences by bodies corporate.

26. Where any contravention of this Act has been committed by a body corporate, and it is proved that such offence has been committed with the consent or connivance of, or is attributed to any negligence on the part of, any director, partner, manager, secretary or other Officer of the body corporate, such director, partner, manager, secretary or other officer of the body corporate, shall be deemed guilty of such contravention along with the body corporate and shall be punished accordingly:

Provided that in the case of a company as defined under the Companies Ordinance, 1984[1] (XLVII of 1984), only the Chief

Executive as defined in the said Ordinance shall be liable under this section.

Explanation.— For the purposes of this section, "body corporate" includes a firm, association of persons and a society registered under the Societies Registration Act, 1860 (XXI of 1860), or under the Co-operative Societies Act, 1925 (VII of 1925).

Offences by Government Agencies, local authorities or local councils.

27. Where any contravention of this Act has been committed by any Government Agency, local authority or local council, and it is proved that such contravention has been committed with the consent or connivance of, or is attributable to any negligence on the part of, the Head or any other officer of the Government Agency, local authority or local council, such Head or other officer shall also be deemed guilty of such contravention along with the Government Agency, local authority or local council and shall be liable to be proceeded against and punished accordingly.

Balochistan may, by notification

28. (1) The Government of Balochistan

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[1] An Ordinance made by the President of Pakistan and published in the Gazette of Pakistan (Extraordinary), Part I, dated 8th October, 1984; saved and protected under Article 270A of the Constitution of Islamic Republic of Pakistan, 1973. Which repealed the earlier Act VII of 1913, S. 508, 7th Schedule.

Environmental Tribunals.

in the official gazette establish Balochistan Environmental Protection Tribunals which shall exercise jurisdiction under this Act.

(2) The Balochistan Environmental Protection Tribunal shall consist of a Chairperson who is, or has been, or is qualified for appointment as, a judge of the High Court to be appointed after consultation with the Chief Justice of the High Court and two members to be appointed by the Government of Balochistan which at least one shall be a technical member with suitable professional qualifications and experience; in the environmental field as may be prescribed. For every sitting of the Balochistan Environmental Protection Tribunal the presence of the Chairperson and not less than one Member shall be necessary.

(3) A decision of Balochistan Environmental Protection Tribunal shall be expressed in terms of the opinion of the majority or if the case has been decided by the Chairperson and only one of the members and a there is a difference of opinion between them, the decision of the Balochistan Environmental Protection Tribunal shall be expressed in terms of the opinion of the Chairperson.

(4) Balochistan Environmental Protection Tribunal shall not, merely by reason of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already; recorded by, or produced, before it.

(5) Balochistan Environmental Protection Tribunal may hold its sittings at such places within its territorial jurisdiction as the Chairperson may decide.

(6) No act or proceeding of Balochistan Environmental Protection Tribunal shall be invalid by reason only of the existence of a vacancy in, or defect in the constitution, of, the Balochistan Environmental Protection Tribunal.

(7) The terms and conditions of service of the Chairperson and members of the Balochistan Environmental Protection Tribunal shall be such as may be prescribed.

Jurisdiction and powers of Balochistan Environmental Tribunals.

29. (1) Balochistan Environmental Protection Tribunal shall exercise such powers and perform such functions as are, or may be, conferred upon or assigned to it by or under this Act or the rules and regulations made there under.

(2) All contravention punishable under sub-section (1) of section 25 shall exclusively be triable by Balochistan Environmental Protection Tribunal.

(3) Balochistan Environmental Protection Tribunal shall not take cognizance of any offence triabal under sub-section (2) except on a complaint in writing by—

(a) the Government Agency or local council;

and

(b) any aggrieved person, who has given notice of not less than thirty days to the Provincial Agency concerned, of the alleged contravention and of his intention to make a complaint to the Environment Tribunal.

(4) In exercise of its criminal jurisdiction, the Balochistan Environmental Protection Tribunal shall have the same powers as are vested in Court of Session under the Code of Criminal Procedure, 1898 (Act V of 1898).

(5) In exercise of the appellate jurisdiction under section 22 the Balochistan Environmental Protection Tribunal shall have the same powers and shall follow the same procedure as an appellate court in the Code of Civil Procedure, 1908 (Act V of 1908).

(6) In all matters with respect to which no procedure has been provided for in this Act, the Balochistan Environmental Protection Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908).

(7) Balochistan Environmental Protection Tribunal may, on application filed by any officer duly authorized in this behalf by the Director-General of the Balochistan Environmental Protection Agency, issue bail able warrant for the arrest of any person against whom reasonable suspicion exist, of

his having been involved in contravention punishable under sub-section (1) of Section 25:

Provided that such warrant shall be applied for, issued, and executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided further that if the person arrested executes a bond with sufficient sureties in accordance with the endorsement on the warrant he shall be released from custody, failing which he shall be taken or sent without delay to the officer in-charge of the nearest police station.

(8) All proceedings before the Balochistan Environmental Protection Tribunal shall be deemed to be judicial proceedings within the meaning of section 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and the Balochistan Environmental Protection Tribunal shall be deemed to be a court for the purpose of section 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(9) No court other than Balochistan Environmental Protection Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of Balochistan Environmental Protection Tribunal extends under this Act, the rules

and regulations made thereunder.

(10) Where the Balochistan Environmental Protection Tribunal is satisfied that a complaint made to it under sub-section (3) is false and vexatious to the knowledge of the complainant, it may, by an order, direct the complainant to pay to the person complained against such compensatory costs which may extend to five hundred thousand rupees.

Appeals to the Environmental Tribunal.

30. (1) Any person aggrieved by any order or direction of the Balochistan Environmental Protection Agency under any provision of this Act, and rules or regulations may prefer an appeal with the Balochistan Environmental Protection Tribunal within thirty days of the date of communication of the impugned order or direction to such person.

(2) An appeal to the Balochistan Environmental Protection Tribunal shall be in such form, contain such particulars and be accompanied by such fees as may be prescribed.

Appeals from orders of the Environmental Tribunal

31. (1) Any person aggrieved by any final order or by any sentence of the Balochistan Environmental Protection Tribunal passed under this Act may, within thirty days of communication of such order or sentence, prefer an appeal to the High Court.

(2) An appeal under sub-section (1) shall be heard by a Bench of not less than two Judges.

Jurisdiction of

Environmental Magistrates.

32. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force, but subject to the provisions of this Act, all contravention punishable under sub-section (2) of section 25 shall exclusively be trial-able by Environmental Magistrate especially empowered in this behalf under section 14 of the Code of Criminal Procedure, 1898 (Act No. V of 1898).

(2) An Environmental Magistrate shall be competent to impose any punishment specified in sub-sections (2) and (4) of section 25.

(3) An Environmental Magistrate shall not take cognizance of an offence trial able under sub-section (1) except on a complaint in writing by—

(a) the Balochistan Environmental Protection Agency, or Government Agency or a local council; *and*

(b) any aggrieved person.

Appeals from orders of Environmental

33. Any person convicted of any contravention of this Act or the rules or regulations by an Environmental Magistrate may, within thirty days from the date of his conviction, appeal to the Court of

Magistrates. Sessions whose decision thereon shall be final.

r to delegate. 34. (1) The Government of Balochistan may, by notification in the official Gazette, delegate any of its or of the Balochistan Environmental Protection Agency powers and functions under this Act and the rules and regulations to any Government Agency, local council or local authority.

(2) The Balochistan Environmental Protection Agency may also by notification in the official Gazette, delegate any of its powers or functions under this Act and the rules and regulations to EPA Regional or sub-offices. In case of nonexistence of its Regional/Sub-offices may delegate its powers or functions to any local council or local authority in the Province.

Power to give directions.

35. In the performance of its functions the Provincial Agency shall be bound by the direction given to it in writing by the Government.

36. No suit, prosecution or other legal proceedings shall lie against the Government, the Council, the Balochistan Environmental Protection Agency, the Director-Generals of the Balochistan Environmental Protection Agency, members, officers, employees, experts, advisers, committees or consultants of the Balochistan Environmental Protection Agency or the Environmental Tribunal or Environmental Magistrates or any other person for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Dues recoverable as arrears of land revenue.

Any dues recoverable by the

37. Balochistan Environmental Protection Agency under this Act, or the rules or regulations shall be recoverable as arrears of land revenue.

Act to override other laws.

38. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

39. The Government of Balochistan may, by notification in the official Gazette, make rules for carrying out the purposes of this Act including rules for implementing the provisions of the international environmental Agreements, specified in the Schedule of this Act.

Power to amend the Schedule.

40. The Government of Balochistan may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.

Power to make regulations.

41. (1) For carrying out the purposes of this Act, the Balochistan Environmental Protection Agency may, by notification in the official Gazette and with the approval of the Government of Balochistan, make regulations not inconsistent with the provisions of

this Act or the rules made thereunder.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) submission of periodical reports, data or information by any Government agency, local authority or local council in respect of environmental matters;

(b) preparation of emergency contingency plans for coping with environmental hazards and pollution caused by accidents, natural disasters and calamities;

(c) appointment of officers, advisers, experts, consultants and employees;

(d) levy of fees, rates and charges in respect of services rendered, actions taken and schemes implemented;

(e) monitoring and measurement of discharges and emissions;

(f) categorization of projects to which, and the manner in which, section 15 applies;

(g) laying down of guidelines for preparation of initial environmental examination and environmental impact assessment and Development of procedures for their filing, review and

approval;

(h) providing procedures for handling hazardous substances; *and*

(i) installation of devices in, use of fuels by, and maintenance and testing of motor vehicles for control of air and noise pollution.

Repeal, savings and succession.

42. (1) The provision of Pakistan Environmental Protection Act 1997[1] (Act No. XXXIV of 1997) applicable to the Province of Balochistan are hereby repealed.

(2) Notwithstanding the repeal of the Pakistan Environmental Protection Act 1997 hereinafter called the repealed Act, any rules or regulations or appointments made, orders passed, notifications issued, powers delegated, contracts entered into, proceedings commenced, rights acquired liabilities incurred, penalties, rates, fees or charges levied, things done or action taken under any provisions of the repealed Act shall, so far as they are not

[1] Act XXXIV of 1997; passed by Majlis-e-Shoora (Parliament) of Pakistan; assented to by the President on 3 rd December, 1997; and published in the Gazette of Pakistan, Part-I, dated 6th December, 1997, pages 1681-1705; repealed to the extent of Balochistan by Balochistan Act VIII of 2012, S. 42.

inconsistent with the provisions of this Act be deemed to have been made, passed, issued, delegated, entered into, commenced, acquired, incurred, levied, done or taken under this Act, until they are repealed, rescind, withdrawn, repealed, replaced or modified in accordance with the provisions of this Act.

(3) On the establishment of the Balochistan Environmental Protection Agency under this Act, all properties, assets and liabilities pertaining to the Balochistan Environmental Protection Agency established under repealed Act shall vest in and be the properties, assets and liabilities, as the case may be, of the Balochistan Environmental Protection Agency established under this Act.

(4) The Balochistan Environmental Protection Agency constituted under the repealed Act and existing immediately before the commencement of this Act shall be deemed to have been constituted under section 5 and the Director General and other officers and employees appointed in the said Agency shall be deemed to be Director General, officers and employees appointed under the Balochistan Civil Servant Act 1974[1].

(5) Notwithstanding the repeal of the Pakistan Environmental Protection Act 1997[2] (Act No. XXXIV of 1997), all proceeding pending immediately before commencement of this Act, against any person under the repealed Act and rules, regulation or order made there under, or any other Law or rules shall continue under that Law and rules, in the manner proceeded thereunder.

[1] Balochistan Act IX of 1974; passed by the Balochistan Assembly on 19th June, 1974; assented to by the Governor of Balochistan; and published in the Balochistan Gazette (Extraordinary) No. 41 dated 20th July, 1974.

[2] See footnote under section 42 (1).

Schedule: (Section 39)

1. International Plant Protection Convention, Rome, 1951.
2. Plant Protection Agreement for the South-East Asia and Pacific Region (as amended), Rome, 1956.
3. Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Eastern Region of its Distribution Area in South-West Asia (as amended), Rome, 1963.
4. Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 1971 and its amending Protocol, Paris, 1982.
5. London Convention on Ocean Dumping 1972.
6. Convention Concerning the Protection of World Cultural and Natural Heritage (World Heritage Convention), 1972.
7. MARPOL Convention on Prevention of Pollution from Ship, 1973/78.
8. Convention on International Trade in Endangered Species of Wild Funa and Flora (CITES), Washington, 1973.
9. Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979.
10. Convention on the Law of the Sea, Montego Bay, 1982.
11. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985.
12. Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987 and amendments thereto.
13. Agreement on the Network of Agriculture Centres in Asia and the Pacific, Bangkok, 1988.
14. Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal,

Basel, 1989.

15. Convention on Biological Diversity, Rio de Janeiro, 1992.

16. United Nations Framework Convention on Climate Change, Rio De Janeiro, 1992.

17. Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 17 March 1992.

18. The Rio Declaration on Environment and Development, 13 June 1992.

19. London Amendment to Montreal Protocol on Substances that deplete the ozone layer, 10 Aug 1992.

20. United Nations Convention on the Law of the Sea, 16 Nov 1994

21. Washington Declaration on Land Based Marine Pollution 1995.

22. UN Convention on Non-Navigational Uses of International Watercourses, 1995.

23. Ban Amendment to the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, 22 Sept 1995.

24. The Kyoto Protocol, 11 Dec 1997.

25. The Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 11 Sept 1998.

26. The Beijing Amendment to the Montreal Protocol on Substances that deplete the ozone layer, 1 Jan 2000.

27. The Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 29 Jan 2000.

28. Stockholm Convention on Persistent Organic Pollutants (POPs), 23 May 2001.

29. International Treaty on Plant Genetic Resources for Food and Agriculture, 3 Nov 2001.

30. Hong Kong International Convention for The Safe And Environmentally Sound Recycling Of Ships, 2009.

Part-II (Green Precedents of Pakistan)

Case 1: Public Interest Law Association: Meherbano Ahsanuddin

2024 PLD 978

Present: Syed Mansoor Ali Shah, Muhammad Ali Mazhar and Shahid Bilal Hassan, JJ

PUBLIC INTEREST LAW ASSOCIATION OF PAKISTAN MEHERBANO AHSANUDDIN and others---Petitioners

Versus

FEDERATION OF PAKISTAN and others---Respondents

C. Ps. Nos. 42 of 2022 and 25 of 2024, decided on 1st July, 2023.

Date of hearing: 1st July, 2024.

ORDER

Ms. Roomina Khursheed Alam**,** Coordinator to the Prime Minister on Climate Change, Ministry of Climate Change and Secretary Climate Change have tendered appearance along with Additional Attorney General and submit that five posts for Members of the Authority established under Section 5 of the Pakistan Climate Change Act, 2017 ("Act") have been advertised and as a result 752 applications have been received, which are under process and soon the said five posts will be filled. Let the said exercise be completed within a fortnight from today without fail. The Notification of a duly constituted Authority be placed on the record on or before the next date of hearing.

2. When inquired, if the Ministry of Climate Change has any climate change policy in place and the effective steps taken in order to address the challenges of climate change, nothing concrete was placed before us. It was mentioned that NDMA and PDMA are looking into the matter. Our understanding is that NDMA and PDMA are disaster management institutions, while the Ministry of Climate Change has to come up with preventive policies addressing the challenges of climate change head-on. It appears that no such policy is in place and no action on the ground has been taken. Still we provide opportunity to the Secretary Climate Change to place the relevant policy on the record and apprise the Court on the next date as to what are the key challenges of climate change and what strategies and plans have been put in place by the Ministry and what action has so far been taken.

3. We have also heard the Chief Secretaries of Punjab, Sindh, KPK and Balochistan. We are not satisfied with their submissions and notice with concern that no material steps have been taken by the

said Provinces to deal with the challenges of climate change as there is no clear strategy(ies), action plans or any adequate steps taken on the ground. The Chief Secretaries undertake that they will submit relevant strategy/action plans to deal with the issue of climate change in their respective Provinces before the next date. Let the said strategies clearly identifying the threats/ challenges of climate change in their respective Provinces and steps taken to address the said challenges.

4. All the Chief Secretaries were asked whether the special budget has been allocated for the climate change in the recent provincial budgets, their reply to this question was in the negative, however, as far as, Punjab is concerned, it has been pointed out that a loan of $ 50 million through Asian Development Bank has been obtained and parked as Climate Change Fund, however, no document in this regard has been placed on the record.

5. It is observed that climate change is a serious existential threat to the people of Pakistan and directly affects the fundamental rights, still the recent provincial budgets have not allocated any Climate Fund for climate change or come up with any effective strategies. This becomes doubly worrying as Monsoon rains are round the corner and the country has still not recovered from the devastating floods of the year 2022.

6. All the Chief Secretaries, as well as, Ms. Roomina Khursheed Alam, Coordinator to the Prime Minister on Climate Change, Ministry of Climate Change and Secretary Climate Change, and, all the concerned officers will appear before the Court on the next date of hearing and apprise the Court of their strategies and steps taken. To come up on 15.07.2024. Ms Ayesha Khan, Regional Managing Director Acumen, 609, 6th Floor, ISE Tower, F-7/1 Blue Area, Islamabad is also appointed as amicus curiae to assist the Court on the aforesaid date. Office will inform amici curiae to be present on the next date of hearing.

7. Considering the critical importance of the issue, let a copy of this order be dispatched to the Prime Minister Secretariat so that the same be placed before the Prime Minister for his perusal.

MWA/P-14/SC Order accordingly.

Case-2 Asghar Leghari---Petitioner

2018 C L D 424

[Lahore]

Before Syed Mansoor Ali Shah, CJ

ASGHAR LEGHARI---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

Writ Petition No.25501 of 2015, decided on 25th January, 2018.

Dates of hearing: 31st August, 4th, 14th September, 5th, 26th October, 18th November, 7th December, 2015, 18th January, 29th February, 29th March, 16th May, 24th May, 5th, 22nd September, 16th November, 14th December, 2016, 16th, 23rd January, 28th February, 12th, 24th May, 12th, 17th July, 6th September, 26th October, 4th, 7th December, 2017 and 25th January, 2018.

JUDGMENT

Climate change is one of the greatest threats to human rights of our generation, posing a serious risk to the fundamental rights to life, health, food and an adequate standard of living of individuals and communities across to world

Achim Steiner

UNEP Executive Director

SYED MANSOOR ALI SHAH, C.J.---The petitioner, who is an agriculturist, has approached this Court as a citizen for the enforcement of his fundamental rights. He submits that overwhelming majority of scientists, experts, and professional scientific organizations related to earth sciences agree that there is sufficient evidence that climate change is for real. He submits that no one can deny the devastating impact of increase in frequency and intensity of climate extremes. Further, most of the experts agree that the major cause is human activities, which includes a complex interaction with the natural environment coupled with social and economic changes that are increasing the greenhouse gases (GHG) in the atmosphere, which are increasing global temperature and in turn causing climate change.

2. The climate system is a highly complex system consisting of the atmosphere, the hydrosphere, the cryosphere, the land surface and the biosphere, and the interactions between them. He submits that for Pakistan, climate change is no longer a distant threat. We are

already feeling and experiencing its impacts across the country and the region. The country experienced devastating floods during the last three years. These changes come with far reaching consequences and real economic costs.

3. Learned counsel for the petitioner submits that in order to address the threat of climate change, the National Climate Change Policy, 2012 ("Policy") and the Framework for Implementation of Climate Change Policy (2014-2030) ("Framework") has been announced by the Ministry of Climate Change, Government of Pakistan, however, no implementation on the ground has taken place. He fears that in the absence of any strategy by the Government to conserve water or move to heat resilient crops, he will not be able to sustain his livelihood. He submits that inaction on the part of Ministry of Climate Change and other Ministries and Departments in not implementing the Framework, offends his fundamental rights, in particular, Articles 9 and 14 of the Constitution besides the constitutional principles of social and economic justice. He submits that international environmental principles like the doctrine of public trust, sustainable development, precautionary principle and intergenerational equity form part of the abovementioned fundamental rights also stand offended. Reliance is placed on Ms. Imrana Tiwana and others v. Province of Punjab and others (PLD 2015 Lahore 522) and Ms. Shehla Zia and others v. WAPDA (PLD 1994 SC 693).

4. The Court treated this environmental public interest petition as a rolling review or a continuing mandamus and considering it to be a writ of kalikasan, as they call it in Philippines, the Court proceeded in an inquisitorial manner by summoning the following parties for assistance:

Federal Government.

i. Cabinet Division, Government of Pakistan.

ii. Ministry of Finance, Revenue and Planning and Development.

iii. Ministry of Foreign Affairs

iv. Ministry of Inter-Provisional Coordination.

v. Ministry of Law and Justice

vi. Ministry of Climate Change.

vii. Ministry of National Food Security and Research.

viii. Ministry of Water and Power.

ix. Irrigation Department.

x. National Disaster Management Authority (NDMA).

Provincial Government.

i. Agricultural Department.

ii. Environment Protection Department/EPA.

iii. Food Department.

iv. Forestry, Wildlife and Fisheries Department.

v. Health Department.

vi. Housing, Urban Development and Public Health Engineering Department.

vii. Planning and Development Department.

viii. Irrigation Department.

ix. Law and Parliamentary Affairs Department.

x. Disaster Management Department (DMD).

5. The above Ministries and Departments along with their focal persons rendered full assistance and filed their respective replies. The National Climate Change Policy, 2010 provides as under:

1. Goal

To ensure that climate change is mainstreamed in the economically and socially vulnerable sectors of the economy and to steer Pakistan towards climate resilient development.

2. Policy Objectives

The main objectives of Pakistan's Climate Change Policy include:

1. To pursue sustained economic growth by appropriately addressing the challenges of climate change;

2. To integrate climate change policy with other inter-related national policies;

3. To focus on pro-poor gender sensitive adaptation while also promoting mitigation to the extent possible in a cost-effective manner;

4. To ensure water security, food security and energy security of the country in the face of the challenges posed by climate change;

5. To minimize the risks arising from the expected increase in frequency and intensity of extreme weather events such as floods, droughts and tropical storms;

6. To strengthen inter-ministerial decision making and coordination mechanisms on climate change;

7. To facilitate effective use of the opportunities, particularly financial, available both nationally and internationally;

8. To foster the development of appropriate economic incentives to encourage public and private sector investment in adaptation measures;

9. To enhance the awareness, skill and institutional capacity of relevant stakeholders;

10. To promote conservation of natural resources and long term sustainability.

3. Pakistan's Vulnerability to Climate Change Threats

The important climate change threats to Pakistan are:

1. Considerable increase in the frequency and intensity of extreme weather events, coupled with erratic monsoon rains causing frequent and intense floods and droughts;

2. Projected recession of the Hindu Kush-Karakoram-Himalayan (HKH) glaciers due to global warming and carbon soot deposits from trans-boundary pollution sources, threatening water inflows into the Indus River System (IRS);

3. Increased siltation of major dams caused by more frequent and intense floods;

4. Rising temperatures resulting in enhanced heat and water-stressed conditions, particularly in arid and semi-arid regions, leading to reduced agricultural productivity;

5. Further decrease in the already scanty forest cover, from too rapid change in climatic conditions to allow natural migration of adversely affected plant species;

6. Increased intrusion of saline water in the Indus delta, adversely affecting coastal agriculture, mangroves and the breeding grounds of fish;

7. Threat to coastal areas due to projected sea level rise and increased cyclonic activity due to higher sea surface temperatures;

8. Increased stress between upper riparian and lower riparian regions in relation to sharing of water resources;

9. Increased health risks and climate change induced migration.

The above threats lead to major survival concerns for Pakistan, particularly in relation to the country's water security, food security and energy security.

4. Climate Change Adaptation

Pakistan makes a tiny contribution to total global greenhouse gas (GHG) emissions (among the lowest in the world) but it is among the countries most vulnerable to climate change, and it has very low technical and financial capacity to adapt to its adverse impacts. For Pakistan to continue on a development path to achieve the goals articulated in the Planning Commission's Vision 2030 document, it is imperative to prepare the ground to enable it to face this new challenge. While Pakistan is working on a strategy that seeks to conserve energy, improve energy efficiency and optimize fuel mix to support global efforts for reduction in GHG emissions, the more immediate and pressing task is to prepare itself for adaptation to climate change. Only by devising and implementing appropriate adaptation measures will it be possible to ensure water, food and energy security for the country as well as to minimize the impact of natural disasters on human life, health and property.

4.1. Water Resources

Water resources are inextricably linked with climate; this is why the projected climate change has such serious implications for Pakistan's water resources. Freshwater resources in Pakistan are based on snow and glacier-melt and monsoon rains, both highly sensitive to climate change. Country specific climate change projections strongly suggest the following future trends in Pakistan: decrease in glacier volume and snow cover leading to alterations in the seasonal flow pattern of the Indus River System (IRS); increased annual flows for a few decades followed by decline in flows in subsequent years; increase in the formation and outburst of glacial lakes; higher frequency and intensity of extreme climate events coupled with irregular monsoon rains causing frequent floods and droughts; and greater demand on water due to higher evapotranspiration rates at elevated temperatures.

These trends will have a significant impact on the spatial and temporal distribution of water resources on both annual and inter-annual basis in the country. This will further exacerbate the already difficult situation of a water- stressed country facing demand increases due to population growth and increasing economic activity.

6. In order to implement the National Climate Change Policy, Federal Government has come up with the Framework for Implementation of Climate Change Policy (2014-2030) which, inter alia, sets four time-frames for implementation of the Policy in the following manner:-

Priority Actions (PA): within 2-years

Short term Actions (SA): within 5-years

Medium term Actions (MA): within 10 years Long term Actions (LA): within 20-years

7. In view of Pakistan's high vulnerability to adverse impacts of climate change, in particular extreme events, adaptation effort is the focus of the Policy and the Framework. The vulnerabilities of various sectors to climate chacasenge have been highlighted and appropriate adaptation actions spelled out. These cover actions to address issues in various sectors such as water, agriculture, forestry, coastal areas, biodiversity, health and other vulnerable ecosystems. Notwithstanding the fact that Pakistan's contribution to global greenhouse gas emissions is very small, its role as a responsible member of the global community in combating climate change has been highlighted by giving due importance to mitigation efforts in sectors such as energy, forestry, transport, industries, urban planning, agriculture and livestock.

8. The Framework for Implementation of the Policy has been developed not as an end in itself, but rather a catalyst for mainstreaming climate change concerns into decision making that will create enabling conditions for integrated climate compatible development processes. It is, therefore, not a stand-alone document, but rather an integral and synergistic complement to future planning in the country. The Framework is a "living document". The goal of the Policy is to ensure that climate change is mainstreamed in the economically and socially vulnerable sectors of the economy and to steer Pakistan towards climate resilient development.

9. The Framework provides adaptation actions for various sectors in the following manner:-

Water Sector: Adaptation Actions:

Pakistan is an agricultural country. Therefore water is an essential resource for sustained economic growth as well as human survival. Water, which is one of the most important national resource is increasingly becoming a scarce natural resource. Presently agriculture sector is using 93% domestic sector 5% and industrial sector 2% of water resources. Our Indus Basin Irrigation System (IBIS) is the world's largest contiguous irrigation system. Water resources are inextricably linked with climate; hence, the projected climate change has serious implications for Pakistan's water resources. The freshwater resources in Pakistan are mainly based on snow and glacier melt and monsoon rains, both being highly sensitive to climate change. Pakistan has moved from a water affluent country to water stressed country. In 1947, per capita water availability was 5000 cubic meter, which has currently decreased to around 1000 cubic meter, and projected to decrease to 800 cubic meter per capita by the year 2025. The country-specific climate projections strongly suggest the following future trends in Pakistan: decrease in the glacier volume and snow cover leading to alterations

in the seasonal flow pattern of IRS; increase in the formation and burst of glacial lakes; higher frequency and intensity of extreme climate events coupled with irregular monsoon rains causing frequent floods and droughts; greater demand of water due to increased evapotranspiration rates at elevated temperatures.

Agriculture and Livestock: Adaptation Actions:

Agriculture sector is the life line and the single largest sector of Pakistan's economy. It contributes 21% to the GDP, employs 45% of the labour force and contributes about 70% to the export earnings. Agriculture in Pakistan is greatly affected by short term climate variability and could be harmed significantly by long-term climate change.

The country is broadly divided into the following 10 agro-ecological zones based on physiographic, climate, soil type and agricultural land use.

I. Indus delta; II. Southern irrigated plain; III. Sandy desert; IV. Northern irrigated plain V. Barani (Rain feed areas); VI. Wet Mountains; VII. Northern dry mountains; VIII. Western dry mountains; IX. Dry western Plateau; X. Sulaiman Piedmont.

Shortening length of growing period:

The duration of crop growth cycle is related to temperature; an increase in temperature will speed up crop growth and shorten the duration between sowing and harvesting. This shortening could have an adverse effect on productivity of crops and fodder for livestock.

Changes in river flows:

The Indus River System gets about 80% water from the Hindu-Kush-Himalaya glaciers. Increasing atmospheric temperatures are expected to increase glacier melt. IPCC (2007) projected that glacier melt in Himalayas would cause increased rivers flows during the next few decades and then followed by decreased river flows, as the glaciers recede.

Increased crop evapotranspiration:

Increased atmospheric temperature would cause higher water evaporation from soil and from plant leaves. These higher evapotranspiration losses would mean that plants would need more water to maintain optimum growth.

Land Degradation:

The deterioration of productive agricultural land areas due to water logging and salinity is causing major threat to food security in the country. Soil erosion due to water and wind is universally recognized as a serious threat to productive agriculture land areas. Water and wind erosion is the direct consequence of climatic parameters of

high intensity rainfall, wind-velocity and higher temperatures. The northern mountainous region suffers from unfavourable soil and moisture regime, thereby causing soil erosion. Similarly arid regions of Punjab (Cholistan), Sindh (Tharparker) and Balochistan (Chaghi Desert and sandy coastal areas) are affected by wind-erosion.

Extreme Weather Events:

According to IPCC (2007), the frequency and intensity of extreme weather events, such as floods, heavy precipitation events, droughts, cyclones etc. are expected to increase in future. Such extreme events can also affect food security.

Livestock Sector:

Since the agriculture and livestock sector are heavily dependent on the vagaries of nature, it is highly vulnerable to climate change phenomena. Climate change will impact food security of the country mainly through reduced crop productivity, adverse impact on livestock health and increased agricultural production losses because of extreme weather events. This will necessitate the agriculture and livestock sectors, particularly in rain-fed areas, to adapt to these climatic changes.

Forestry Sector:

Generally most of the forests in Pakistan are prone to the threats of changing climate in the form of changes in species composition, disease and insect attacks, more frequent forest fires, and shifting habitats due to unfavourable climatic conditions. Further research is required to investigate the real and specific climate change threats to each forest type so as to undertake realistic adaptation measures.

10. Petitioner submits that the most immediate and serious threat to Pakistan is that of water, food and energy security. It is submitted that priority items under the Framework have not been complied with and no action has been taken by the respective Governments or authorities to develop adaptative capacity and resilience to address climate change.

11. Climate Change is a defining challenge of our time and has led to dramatic alterations in our planet's climate system. For Pakistan, these climatic variations have primarily resulted in heavy floods and droughts, raising serious concerns regarding water and food security. On a legal and constitutional plane this is clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court.

12. Fundamental rights, like the right to life (Article 9) which includes the right to a healthy and clean environment and right to human dignity (Article 14) read with constitutional principles of democracy, equality, social, economic and political justice include

within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Environment and its protection has taken a center stage in the scheme of our constitutional rights. It appears that we have to move on. The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change.

13. As no substantial work has been done to implement the Framework by the Government, and realizing that its effective and immediate implementation is necessary for the protection and safeguard of the fundamental rights of the people, this Court constituted Climate Change Commission ("CCC") vide order dated 14.09.2015 in the following manner:-

I. <u>CONSTITUTION OF CLIMATE CHANGE COMMISSION</u>

"Climate Change Commission" is hereby constituted under Order XXVI C.P.C., comprising the following members:-

1.	Dr. Parvez Hassan, Advocate, PAAF Building, second floor Kashmir Egerton Road, Lahore	Chairman
2.	Secretary, Ministry of Climate Change.	Member
3.	Secretary, Ministry of Water and Power.	Member
4.	Secretary, Ministry of Finance, Revenue and Planning and Development.	Member
5.	Director General, National Disaster Management Authority.	Member
6.	Director General, International Organization/Climate Change at the Ministry of Foreign Affairs (nominated by the Foreign Secretary).	Member
7.	Secretary, Irrigation Department, Government of the Punjab.	Member
8.	Secretary, Agriculture Department, Government of the Punjab.	Member
9.	Secretary, Food Department, Government of the Punjab.	Member
10.	Secretary, Forest Department, Government of the Punjab.	Member
11.	Secretary, Health Department, Government of the Punjab.	Member
12.	Director, Provincial Disaster Management Authority.	Member
13.	Secretary, Environment Protection Department, Government of the Punjab.	Member
14.	Mr. Ali Tauqeer Sheikh, CEO and National Program Director, LEAD, Pakistan, LEAD House, F-7, Markez Islamabad.	Member
15.	Mr. Hamad Naqi, Director General, WWF, Lahore.	Member
16.	Mr. Mehmood Akhtar Cheema, Manager, Islamabad	Member

	Program Office, IUCN.	
17.	Mr. Abid Solehri, CEO, SDPI	Member
18.	Ms. Saima Amin Khawaja Advocate, 78-B, Mozang Road, Lahore	Member
19.	Mr. Anwaar Hussain Assistant Advocate General, Punjab	Member
20.	Mr. Mansoor Usman Awan, Advocate, Counsel for the petitioner.	Member
21.	Irfan Tariq, D.G. (Environment), Ministry of Climate Change, Islamabad	Secretary

II. TERMS OF REFERENCE OF CLIMATE CHANGE COMMISSION:-

Objective/Terms of Reference:

a) Effective implementation of National Climate Change Policy, 2012 ("NCCP") and the Framework for Implementation of Climate Change Policy (2014-2030) ["Framework"]

III. POWER OF THE COMMISSION

a) The above Commission shall enjoy the powers under Order XXVI of the C.P.C. in order to achieve the objective of the Commission.

b) The Commission shall have the power to co-opt any person/ expert, at any stage.

c) The Commission can seek assistance of any Federal or Provincial Government Ministries/Department by approaching the concerned Ministries/Departments in writing and the concerned Ministries/Departments are hereby directed to render full assistance to the Commission in respect of the above Terms of Reference.

IV. QUORUM OF THE COMMISSION

The quorum of the Commission shall be five which shall include the Chairman.

V. SECRETARIAT OF THE COMMISSION:

The secretariat of the Commission shall be housed at the Ministry of Climate Change, Islamabad, however, venue of the meeting will be decided by the Chairman.

VI. EXPENSES OF THE COMMISSION:

(a) Secretarial expenses of the Commission shall be borne by the Ministry of Climate Change.

(b) The Commission may approach this court at any stage to seek appropriate orders for facilitation of their work.

VII. INTERIM REPORT

The Commission shall file interim reports as and when directed by this Court.

14. During the course of hearing Strategy 4.2 of the Framework regarding "legislating and implementing the draft National Water Policy to address the water related vulnerabilities induced by climate change." Actions 4.2.1 and 4.2.2 therein provide as follows:-

4.2.1 Ensure that water related vulnerabilities induced by climate change are part of "National Policy". 4.2.2 Ensure the expeditious approval of draft "National Water Policy" and its implementation.

15. Water has become Pakistan's number one development and governance issue. Our per capita water availability has diminished from about 1,500 to nearly 1,000 cubic meters, owing to fast-growing population. In a recent article on economic growth Ali Tauqeer Sheikh, CEO, LEAD Pakistan writes as follows:-

"We will need to lay foundations for the blue economy. We will need water to fuel our economy, create water jobs, invest in water efficient technologies, create water markets for water savings and systems. It is critical for Pakistan to make water the central plank of our development agenda, if we are to meet our SDGs targets . Climate change poses a more serious threat to Pakistan's water supply than India's. India cannot stop Pakistan's water beyond a certain number of days even if it wanted to. At the risk of international isolation it can suddenly release water in some of our rivers and cause damage, or deny water to some crops by exploiting timing. These issues can be handled by our water diplomats. But climate change poses more existential challenges. The changing monsoon pattern is making water supply erratic. It has started reaching the upper reaches of our Himalayan ranges and parts of Balochistan not traditionally covered by monsoon rains. Karachi and other coastal areas have begun to receive more frequent warnings about cyclones. Changes in rain patterns raise questions about food security and the need to invest in climate-smart agriculture. While we have a greater incidence of hydro-metrological droughts in parts of Balochistan, Punjab and Sindh, urban and rural flooding is becoming a recurrent phenomenon. In fact, torrential rains in the Jammu region and the upper reaches of the Kabul river basin have flooded Sialkot in Punjab and Nowshera in KP, drawing attention to emerging transboundary risks. As the glaciers recede, we face the threat of permanent reduction in our water lifeline."

16. The Chairman, Climate Change Commission placed on record Supplemental Report dated 24.02.2017 making the following recommendations:-

Recommendations "The Commission recommends that the Secretary P&DD should submit plans for initiation of remaining about 100 Pas and also compile a quarterly report on completion of

work on ongoing 144 PAs. Priority Projects in ADP 2016-2017: Since the last submission, the Commission has helped some GOPb departments prioritize 15 'climate smart' projects of which 13 were finally approved by P&DD for inclusion in the ADP 2016-2017. The Commission learnt that the financial value of these projects was relatively miniscule in percentage terms of the total development budget of the province. The Commission recommends that in the next FY, this number should ramp up substantially and that this allocation should include specific budget lines for social and softer components-and not just he infrastructural investments. The Commission, if requested by the Departments will be pleased to review and guide on selected projects. Framework for Developing and Assessing Climate-Smart Projects under Annual Development Plans: The Commission learnt that there was no shared definition of 'climate smart' or 'climate compatible' projects that was used by the departments. Therefore, there was a great deal of variance in the quality, consistency even climate relevance (adaptation or mitigation) of these projects. The officers developing projects in GOPb's various departments needed a guidance tool or a framework for developing climate compatible projects in future. The Framework for Developing and Assessing Climate-Smart Projects under Annual Development Plans was approved at the 9th meeting of the Commission will fill that void now. Further, the Commission was requested to develop some core material that could facilitate implementation of the Framework and could also be used for the capacity building of the concerned officers. Such material has been developed and ready to be used. The Commission recommends that, starting from FY 2017-2018, the Framework should be used for designing and developing projects for ADB, at least for some projects by selected provincial departments. For this purpose, the Commission recommends that 1) a high level Committee be constituted to oversee the earnest implementation of the Framework, 2) Secretary P&DD and MOCC initiate capacity building of concerned officers of CC Focal Points in GOPb departments and other concerned officers. Accessing International Climate Finance and Linkages with NDCs: The Commission learnt that the GOP‟s capacity to access international climate finance needed substantial strengthening in order to fast track climate related investments/projects. The Commission has developed 12 recommendations for GOP to access international climate finance and recommends the MOCC to work with P&DD in order to develop projects and access international finance. The Commission recommends that all climate related investments/projects in the province should be specifically linked with Pakistan's NDC commitments and their implementation at the provincial levels. Moving forward, the Commission recommends the following steps: I. The Framework for Developing and Assessing Climate-Smart Projects under Annual Development Plans be used/piloted by each GOPb department to develop their requests for ADB allocations. The preparations for the next ADP have just begun and the timing is perfect. If requested, the Commission can assist with capacity building of the concerned officers in the province. II. Each GOPb

Departments should develop its plans of action, giving a list of priority projects/areas of investment. The Commission can assist them in developing their plans of action and determine their strategic priorities for the next 2-3 year's ADPs. III. P&DD needs to develop a template/criteria that could guide the decisions on the requests from the departments. The Commission can work with the officers at the P&DD develop such a template and operationalize for the next years‟ ADP." Considering that these recommendations are an outcome of the deliberations of the Commission, which includes members of the Government, therefore, I make these recommendations part of this order and direct the concerned Ministries/Departments of Federal, as well as, Provincial Governments to implement the same.

17. As recorded in order dated 06.09.2017 the matter regarding formulation of the National Water Policy was taken up by Council of Common Interest (CCI) in its meeting held on 25.08.2017 wherein CCI considered the matter and it was decided that the matter be placed before the Ministry of Water Resources to re-examine the Policy and resubmit the same in the next CCI meeting.

18. The Chairman has submitted its report today i.e., 25.01.2018, which is reproduced for ready reference:

CLIMATE CHANGE COMMISSION

SUPPLEMENTAL REPORT ON IMPLEMENTATION

OF PRIORITY ACTIONS

24 January 2018

A. Background Note

In its Final Report dated 16 January 2016 to the Lahore High Court, the commission had reported on the progress in the implementation of the PAs upto 31 December 2015. On the review of the Final Report, the Lahore High Court ordered, on 18 January 2016, that the "Commission is additionally tasked to look into the short term actions under the Framework and come up with a workable and achievable timetable for the same."

A Supplemental Report was submitted on the order of the Lahore High Court dated 18 January 2016. It included the Reports of six (6) Working Groups, giving an update on their actions on the Priority Actions. Overall, of the 242 Priority Areas given in FCCPI, the 6 Working Groups reported progress on 144 PAs and that is about 60 percent of the total Priority Areas. The progress on 144 PAs is uneven and at various stages of progress, and many will need more time and resources for completion.

This report is follow up to the last supplemental report and summarizes progress against Priority Actions till 31st December, 2017. All working groups were requested to share update on

progress in various sectors against Priority Actions. The following Working Groups submitted revised reporting in January 2018:

1. Working Group on Water

2. Working Group on Wildlife, Forestry and Biodiversity

3. Working Group on Coastal and Marine Areas

Several new projects and initiatives were reported by the Working Groups especially in the Wildlife, Forestry and Biodiversity sectors. Yet no additional Priority Areas were addressed by any of the sectors as compared to previous reporting.

Actions Triggered by the Climate Change Commission

There are a total of 735 actions suggested in the Framework, out of which 242 are Priority Actions, 380 Short Term, 108 Medium Term and only 5 are Long Term Actions.

The Climate Change Commission was given the mandate to report on the Priority Actions under the assumptions that these will trigger subsequent attainment of Short, Medium and Long Term Actions.

The report submitted indicates progress on 144 PAs and that is about 60 percent of the total Priority Areas. The progress on PAs remains uneven and at various stages of progress, and many will need more time and resources for completion.

No completion report on any of the Priority Actions was requested/submitted. However as Priority Actions come to closure, it will be useful for departments to maintain catalogue of completed PAs along with any progress on Short, Medium and Long Term Actions.

The Commission triggered climate action in the province of Punjab at several levels. It was beyond the ambit of the Commission to compile full catalogue of actions instigated by its influence. However it will be useful for stakeholders if such a report is compiled. Some key actions triggered by the Commission are:

i. Designation of climate change focal points in all provincial line departments and their capacity building by LEAD Pakistan in Islamabad to enable integration of Climate Change in provincial development plans and growth strategies.

ii. Two training workshops organized by LEAD Pakistan at PDD Lahore engaging senior and operational staff to enable climate smart evaluation of projects.

iii. Framework for Design and Evaluation of Climate Smart Projects was developed and approved by the Commission members for piloting and testing by PDD Punjab in future.

iv. Draft Climate Change Policy and Draft Water Policy of Punjab developed and awaiting approval of provincial cabinet.

v. For the preparation of provincial Climate Change Policy, several background studies and infographics were developed.

B. <u>Summary of Supplemental Reprt</u>

Total Priority Actions (PA) in FCCPI	**PA covered in Working Group reports**	**PA addressed in Working Group Reports**	**% Priority Actions addressed**
242	**188**	**160**	**66.11**

No.	**SECTORS**	**Priority Actions in FCCPI**	**Progress Reported by WG**	**% PAs Addressed by WGs.**
01	Coastal and Marine Areas	08	07	87.5%
02	Agriculture and Livestock	47	34	72.3%
03	Forestry	30	30	100%
04	Biodiversity	04	04	100%
05	Wetlands	06	06	100%
06	Energy	22	18	81.81%
07	Disaster Management	29	25	86.20%
08	Water	42	36	85.71%
	TOTAL	**188**	**160**	**85%**

Here is the breakdown on PAs from each of the six (6) Working Groups:

Forest, Biodiversity and Wildlife

No.	**Categories**	**Priority Actions**
1	Policy/law making and implementation	10
2	Enabling Environment	7
3	Institutional strengthening and capacity building	9
4	Awareness	5
5	Assessment/Research	3
6.	Infrastructure/Technology Implementation	6
	TOTAL	**40**

Disaster Management Working Group

No.	**Categories**	**Priority Actions**
1	Policy/law making and implementation	03

2	Enabling Environment	03
3	Institutional strengthening and capacity Building	07
4	Awareness	03
5	Assessment/Research	08
6	Infrastructure/Technology Implementation	05
	TOTAL	**29**

Energy

No.	**Categories**	**Priority Actions**
1	Policy/law making and implementation	05
2	Enabling Environment	06
3	Institutional Strengthening and Capacity Building	04
4	Awareness	03
5	Assessment/Research	02
6	Insfrastructure/Technology Implementation	02
	TOTAL	**22**

Coastal and Marine Areas

No.	**Categories**	**Priority Actions**
1	Policy/law making and implementation	00
2	Enabling Environment	01
3	Institutional Strengthening and Capacity Building	02
4	Awareness	00
5	Assessment/Research	03
6	Infrastructure/Technology Implementation	00
	TOTAL;	**06**

Agriculture and Livestock

No.	**Categories**	**Priority Actions**
1	Policy/law making and implementation	05
2	Enabling Environment	03
3	Institutional Strengthening and Capacity Building	08
4	Awareness	08
5	Assessment/Research	11
6	Infrastructure/Technology Implementation	12
	TOTAL;	**47**

Water

No.	Categories	PA Actions
1	Policy/law making and implementation	13
2	Enabling Environment	04
3	Institutional Strengthening and capacity Building	04
4	Awareness	04
5	Assessment/Research	29
6	Insfrastructure/Technology Implementation	26

Accumulatively, each category has PA for each Working Group, as shown in the table below.

No.	Categories	Water	Agricul-ture	Coastal and Marine	Energy	Forest, biodiver-sitry	Disaster Mgmt	Total
1	Policy/law making and implementation	13	03	0	5	10	3	**34**
2	Enabling Environment	4	04	1	6	7	3	25
3	Institutional Strengthening and Capacity Building	4	05	2	4	9	7	**31**
4	Awareness	4	02	0	3	5	3	**17**
5	Assessment/ Research	29	11	3	2	3	8	**56**
6	Infrastructure / Technology Implementation	26	09	0	2	6	5	**48**
	Total:	**80**	**34**	**6**	**22**	**40**	**29**	**211**

19. Climate Change Commission was constituted to ensure that the concerned Ministries, as well as, concerned Departments take charge of the matter so that the Province, as well as, the Country moves towards climate resilient development. According to the report submitted by the Commission almost 66.11% of the priority items of the Framework have been completed due to effort made by the Commission. The Chairman submits that the Commission has achieved its goals and now the matters should be left to the respective Governments to take forward. It is also pointed out that during the pendency of this petition the Federal Government has promulgated "Pakistan Climate Change Act, 2017" ("Act"), which was gazetted on April, 3, 2017 and establishes Pakistan Climate Change Authority. He proposes that in order to move forward, it is best if the Federal Government is directed to give effect to the aforesaid Act and

further implement the Framework. I tend to agree with the Chairman of the CCC. Commissions constituted by our courts have played multiple roles, especially commissions constituted to address environmental concerns. In this case the Commission has been the driving force in sensitizing the Governments and other stakeholders regarding gravity and importance of climate change. The Commission has been a platform for discussion and planning regarding climate change and has materially assisted in developing human capacity to face the challenges of climate change under the auspices of the members of the Commission, in particular LEAD Pakistan. It is only because of the able stewardship of the Chairman, Dr. Parvez Hassan and the untiring and passionate efforts of the Members of the Commission that 66.11% of priority actions under the Framework have been successfully implemented.

Environmental Justice

20. On a jurisprudential plane, a judge today must be conscious and alive to the beauty and magnificance of nature, the interconnectedness of life systems on this planet and the interdependence of ecosystems. From Environmental Justice, which was largely localized and limited to our own ecosystems and biodiversity, we have moved on to Climate Justice. Our environmental jurisprudence from Shehla Zia case to Imrana Tiwana case (referred to above) has weaved our constitutional values and fundamental rights with the international environmental principles. The environmental issues brought to our courts were local geographical issues, be it air pollution, urban planning, water scarcity, deforestation or noise pollution. Being a local issue, evolution of environmental justice over these years revolved around the national and provincial environmental laws, fundamental rights and principles of international environmental laws. The solutions entailed penalties and shifting or stoppage of polluting industries based on a precautionary approach leading to the recognition of the Environmental Impact Assessment (EIA).

Climate Justice

21. Enter Climate Change. With this the construct of Environmental Justice requires reconsideration. Climate Justice links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly. Climate justice is informed by science, responds to science and acknowledges the need for equitable stewardship of the world's resources. The instant case adds a new dimension to the rich jurisprudence on environmental justice in our country. Climate Change has moved the debate from a linear local environmental issue to a more complex global problem. In this context of climate change, the identity of the polluter is not clearly ascertainable and by and large falls outside the national jurisdiction. Who is to be penalized and who is to be restrained? On the global platform the remedies are adaptation or mitigation. In case of Pakistan,

adaptation is largely the way forward. Adaptation is a response to global warming and climate change, that seeks to reduce the vulnerability of social and biological systems to relatively sudden change and thus offset the effects of global warming. Adaptation is especially important in developing countries since these countries are predicted to bear the brunt of the effects of global warming. Adaptation is the capacity and potential for humans to adapt (called adaptive capacity) and is unevenly distributed across different regions and populations, and developing countries generally have less capacity to adapt. Mitigation consists of actions to limit the magnitude or rate of long-term climate change. Climate change mitigation generally involves reductions in human (anthropogenic) emissions of greenhouse gases (GHGs). Mitigation may also be achieved by increasing the capacity of carbon sinks, e.g., through reforestation. Mitigation policies can substantially reduce the risks associated with human-induced global warming.

22. Adaptation, as a strategy engages many stakeholders, which hitherto were not part of the environmental dialogue. Climate Justice, therefore, moves beyond the construct of environmental justice. It has to embrace multiple new dimensions like Health Security, Food Security, Energy Security, Water Security, Human Displacement, Human Trafficking and Disasters Management within its fold. Climate Justice covers agriculture, health, food, building approvals, industrial licenses, technology, infrastructural work, human resource, human and climate trafficking, disaster preparedness, health, etc. While mitigation can still be addressed with environmental justice, adaptation can only be addressed through Climate Justice, where the courts help build adaptative capacity and climate resilience by engaging with multiple stakeholders.

Water Justice

23. In the context of Pakistan, the impending water crisis are accelerated by the impact of climate change on the hydrological cycle. The availability of water resources to satisfy the demands of society and those of the environment is a crisis of governance and justice. Water is life. Water is a human right and all people should have access to clean and affordable water. Water has interconnectedness with people and resources and is a commons that should be held in public trust. This brings us to Water Justice, a sub-concept of Climate Justice. Water justice refers to the access of individuals to clean water. More specifically, the access of individuals to clean water for survival (drinking, fishing, etc.) and recreational purposes as a human right. Water justice demands that all communities be able to access and manage water for beneficial uses, including drinking, waste removal, cultural and spiritual practices, reliance on the wildlife it sustains, and enjoyment for recreational purposes. Right to life and Right to human dignity under Articles 9 and 14 of the Constitution protect and realise human rights in general, and the human right to water and sanitation in particular. In adjudicating water and water-related

cases, we have to be mindful of the essential and inseparable connection of water with the environment, land and other ecosystems. Climate Justice and Water Justice go hand in hand and are rooted in Articles 9 and 14 of our Constitution and stand firmly on our preambluar constitutional values of social and economic justice.

Dissolution of the Climate Change Commission

24. The submissions made by the Chairman of CCC regarding passing future responsibility of implementing the Framework to the Government is accepted. The Climate Change Commission after rendering a remarkable public and pro bono service, is hereby dissolved. The constitution and working of the Commission has resulted in developing a valuable resource on climate change which can be useful for the Government in the years to come. The respective Governments have to still implement the Framework, formulate the National Water Policy and ensure that the new Act is actualized and given effect to in letter and spirit. These objectives are critical for sustainable development and for the safeguard and protection of the fundamental rights of the people of Pakistan.

Standing Committee on Climate Change

25. In order to facilitate the working of the Federal Government, Ministry of Climate Change, Provincial Government, Planning and Development Department, as well as, CCI, the Court hereby constitutes a Standing Committee on Climate Change, which will act as a link between the Court and the Executive and will render assistance to the above mentioned Governments and Agencies in order to ensure that the Policy and the Framework continue to be implemented. The Federal and Provincial Governments and the CCI shall engage, entertain and consider the suggestions and proposals made by the Standing Committee.

26. The Members of the Standing Committee shall be as follows:-

1.	Dr. Parvez Hassan, Advocate, Climate Expert	Chairperson
2.	Advocate General, Punjab	Member
3	Secretary Climate Change, Ministry of Climate Change, Islamabad	Member
4.	Chairman, Planning and Development Department, Government of the Punjab	Member
5.	Mr. Ali Tauqeer Sh., CEO and National Program Director, LEAD, Pakistan	Member
6.	Ms. Saima Amin Khawaja, Advocate/ Environmentalist 78-B, Mozang Road, Lahore.	Member

27. In the light of above, these proceedings stand concluded. I, do not wish to dispose of the petition, but instead, consign it to the record, so that the Standing Committee can approach this Court for appropriate order for the enforcement of the fundamental rights of

the people in the context of climate change, if and when required. If any such application is filed, the case shall be revived and fixed before any Green Bench as per the Case Management Plan.

MWA/A-15/L Order accordingly.

Case-3: Haroon Farooq----Petitioner

2023 C L C 1

[Lahore]

Before Shahid Karim, J

HAROON FAROOQ----Petitioner

Versus

GOVERNMENT OF PUNJAB through Chief Secretary and 9 others----Respondents

Writ Petition No.227807 of 2018, decided on 9th September, 2021.

ORDER

SHAHID KARIM, J.----This litigation was brought as a social action petition (and connected petitions W.P No.2132 of 2020, W.P No.67602 of 2019 and W.P No.71047 of 2019) with climate change as the centerpiece. It is asserted that the Federal Government and the Province of Punjab have taken insufficient steps for countering the climate crises and the petitioner is actuated by failure of these governments to develop disaster management plans. The primary theme of these petitions is that directions be issued by this Court to compel the State to invest in climate mitigation strategies. It was obvious that the subject matter of these petitions broached issues which gave rise to real and immediate concern for an environmental and social framework to be put in place to reduce greenhouse gas emissions and building resilience, all while developing economic, environmental, health and social co-benefits.

2. An exhaustive scientific assessment in 2018 warned that a failure to keep the average temperature from rising more than 1.5 degree celcius compared with the start of the industrial age, could have catastrophic results, including inundation of coastal cities and crop failures in various parts of the world. A landmark assessment by the Intergovernmental Panel on Climate Change was published on 9th August, 2021 (IPCC, 2021). The sobering report approved by 195 nations shines a harsh spotlight on governments dithering in the face of mounting evidence that climate change is an existential threat. It concluded that "all but a tiny fraction of warming so far is unequivocally caused by human activities" and that "even if the 1.5C target humanity is now poised to overshoot is miraculously achieved, it would still generate heatwaves, rainfall, drought and other extreme weather unprecedented in the observational record". The crux of IPCC, 2021 is that Earth's average temperature could reach 1.5 degree celcuis above pre-industrial levels around 2030, a

decade earlier than projected only three years ago. In an opinion published in the New York Times of July 24-25, 2021 by respected environmentalist Susan Joy Hassol, Kristie Ebi and Yaryna Serkez, the situation precipitated by global warming has been summed up:

"Summers that seemed exceedingly hot 50 years ago are becoming much more commonplace. The extreme heat of that era - which had a chance of occurring of only one-tenth of 1 percent during the summer season - is now reached more than 20 percent of the time, according to calculations by the climate scientist James Hansen. That's 200 times as often. And nights are warming faster than days, at nearly twice the rate. So much for relief."

"Heat is one of the deadliest kinds of extreme weather in the United States. From 1991 through 2018, 37 percent of heat-related summer deaths were attributable to human-caused climate change, according to a study published in the journal Nature Climate Change in May."

These events are emblematic of a larger trend in extreme heat, driven by global warming. And it's not just a climate problem; as those mortality figures show, it can be a public health catastrophe. In addition to heat stress, extreme heat can worsen chronic conditions such as cardiovascular, respiratory and cerebrovascular disease, and diabetes-related conditions.

The study in Nature Climate Change found that human-induced climate change increased the annual average temperature globally in the warm season by nearly three degrees, to 73.4 degrees Fahrenheit, across 732 locations around the world.

The intense heat that hit the Pacific Northwest in late June and early July would have been virtually impossible in the absence of human-caused climate change, according to an analysis by an international group of scientists working with the group World Weather Attribution. Scientists say they had never seen such a jump in record temperatures like this - breaking records by up to 11 degrees - prompting a co-leader at World Weather Attribution to suggest to the magazine Scientific American that the region may have crossed a threshold in which these kinds of events become much more common. Climate change doesn't always proceed in a linear fashion and often exceeds the predictions of computer models."

3. Our Constitution is a social compact between the State and the people. It contains rights which the State is under obligation to enforce and a failure to do so spawns rights-based environmental litigation. We may refer to various provisions in the Constitution which give rise to such rights to inhere in the people of Pakistan and for which the State is obligated to take real and immediate measures so that climate crisis can be averted in all its manifestations. Article 3 of the Constitution requires the State to ensure elimination of all forms of exploitation and the gradual fulfilment of the fundamental

principle, that is, from each according to his ability to each according to his work. This concept of elimination of exploitation can only be fulfilled if the State takes meaningful measures for the control of environmental degradation and for climate justice to be enforced so that the basic principle enshrined in Article 3 can be achieved. Article 9 of the Constitution provides that:

"9. Security of person:- No person shall be deprived of life or liberty save in accordance with law."

4. There is a plethora of precedents which have given an expansive view to the term 'life' as used in Article 9 which clearly includes life which is free from hazards caused by environmental pollution in order to nurture healthy and robust life for the people of Pakistan. Article 38 which is one of the principles of policy, inter alia, obliges the State to secure the well-being of the people to provide basic necessities of life such as food, clothing, housing, education and medical relief, irrespective of sex, caste, creed or race. Again this can only be achieved by the State by ensuring the minimum standards comprised in the term 'life' and to prevent the climate crisis so that human activity can be carried on without the harmful effects of severe weather events which are caused by climate change. The concept of penumbras has been employed to enlarge the meaning of life and doubtless, if climate crisis triggers life-changing events, then the right conferred by Article 9 is in serious jeopardy.

5. Water supplies and its preservation has received special attention of the framers of the Constitution by the enactment of Article 155 which reads as under:

"155. Complaints as to interference with water supplies: (1) If the interests of a Province, the Federal Capital or the Federally Administered Tribal Areas, or any of the inhabitants thereof, in water from any natural source of supply [or reservoir] have been or are likely to be affected prejudicially by -

(a) any executive act or legislation taken or passed or proposed to be taken or passed, or (b) the failure of any authority to exercise any of its powers with respect to the use and distribution or control of water from that source, the Federal Government or the Provincial Government concerned may make a complaint in writing to the Council.

(2) Upon receiving such complaint, the Council shall, after having considered the matter, either give its decision or request the President to appoint a commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as he may think fit, hereinafter referred to as the Commission.

(3) Until Majlis-e-Shoora (Parliament)] makes provision by law in this behalf, the provisions of the Pakistan Commissions of Inquiry Act, 1956, as in force immediately before the commencing day shall

apply to the Council or the Commission as if the Council or the Commission were a Commission appointed under that Act to which all the provisions of section 5 thereof applied and upon which the power contemplated by section 10A thereof had been conferred.

(4) After considering the report and supplementary report, if any, of the Commission, the Council shall record its decision on all matters referred to the Commission.

(5) Notwithstanding any law to the contrary, but subject to the provisions of clause (5) of Article 154, it shall be the duty of the Federal Government and the Provincial Government concerned in the matter in issue to give effect to the decision of the Council faithfully according to its terms and tenor.

(6) No proceeding shall lie before any court at the instance of any party to a matter which is or has been in issue before the Council, or of any person whatsoever, in respect of a matter which is actually or has been or might or ought to have been a proper subject of complaint to the Council under this Article.

6. This litigation is primary concerned with the preservation of water resources and the groundwater levels which have seen a stunning depletion over the years. The Constitution mandates that the interest of a Province or any of the inhabitants should not be affected prejudicially by the failure of any authority to exercise any of its powers with respect to the use and the distribution or control of water from any natural source of supply. This has been made one of the subject matters to be taken cognizance of by the Council of common interests upon a complaint in this regard. Alternatively, this can also give rise to litigation of the present nature to be brought before the courts for the redressal of those grievances and for climate justice to be enforced by the courts. This may be the result of citizens being frustrated by government inaction and threatened by climate change impacts on their lives and human rights and the courts have, in turn, issued groundbreaking climate decisions.

7. It was said by A. Guterres (Secretary General of United Nations) that:

"Climate change is , quite simply, an existential threat for most life on the planet -including, and especially, the life of humankind. And human are causing it."

(Key note address. Speech given at the R20 Austria World Summit Vienna. May 15, 2018)

8. In a report compiled by Intergovernmental Panel on Climate Change (IPCC) 2018 human activity has already caused a 1 C warming above the pre-industrial mean temperature. This 1 C shift has triggered increasingly frequent and intense extreme weather events, rising sea-levels, and diminishing Arctic sea ice. Across Asia

and the Pacific, populations endure severe weather, heat stress, flooding, droughts and sea level rise. According to the World Health Organization (WHO) it is estimated that climate change causes 150000 deaths annually, including deaths from extreme weather (The Health And Environment Linkages Initiative. Climate Change). The WHO further notes that air pollution -significantly contributed to by fossil fuels kills around 7 million annually in 2020 and according to the report compiled in the year 2018, the WHO concluded that 9 out of 10 people worldwide breathe polluted air. In its previous report compiled by IPCC in 2014, (Climate Change 2014: Synthesis Report Contribution of Working Groups I, II, III to the Fifth Assessment Report of the IPCC. Geneva) it was stated that:

"Human influence on the climate system is clear and recent anthropogenic emissions of greenhouse gases are the highest in history and that the level of warming was unprecedented over decades to millennia."

9. In December 2020, Asian Development Bank (ADB) published a Report Series (The ADB report) consisting of four reports entitled "Climate Change, Coming Soon to a Court Near You", which is a flagship publication series of the law and policy reform program under the office of the General Counsel of ADB. It describes climate change as a clarion call for judges and alludes to the role of judges to the contribution of better climate outcomes in the following words:

"Judges' role in government makes them gatekeepers, even climate emergency managers. Judges are central to

l holding governments accountable for meeting policy commitments and complying with legal obligations on climate change, the environment, and sustainable development, and thereby shaping legal and policy frameworks;

l admitting relevant and credible scientific evidence for climate change in courtrooms and making judicial findings of fact about climate change, which can elevate the national discourse on climate change (indeed, courts have successfully incorporated international scientific consensus, synthesized by the Intergovernmental Panel on Climate Change, into domestic legal common ground, ensuring that advancements in climate science filter into local law); and

l balancing outcomes and protecting citizens' fundamental, constitutional and other legal rights, frequently closing the gaps through which people and ecosystems fall.

l These functions demonstrate that judges have a vital role in climate governance in Asia and the Pacific. Supporting judges to respond to climate litigation contributes to better quality climate governance."

" Significant judicial advancements have often rested on the shoulders of jurists who were willing to apply new consciousness and imagination to existing principles to resolve society's pressing problems. We need new perspectives to create climate justice. Justice will only be fair if it considers diverse perspectives and rights-those of women, children, elders, indigenous peoples, the differently abled, and future generations, as well as those of the traditional power structures."

10. The report gives a compilation of climate litigation in Asia and the Pacific and the rest of the world and notes that judges have a vital role in climate governance as well as the fact that climate litigation is growing in Asia and the Pacific and around the world. And so judges and quasi judicial decision-makers must have excess to climate law resources. The ADB report is a leading resource of knowledge on climate litigation in Asia as well as the National and International climate change legal frameworks. The purpose of ADB's report on climate law and litigation has been stated as:

"Frustrated by government inaction on climate change, citizens around the world are turning to their courts, commissions, and tribunals, unleashing lawsuits across the globe. The number of cases is growing and will likely grow exponentially as climate impacts intensify. Typically, national climate impacts and circumstances shape domestic litigation. These cases look for action, climate justice and sustainable development; and protection of rights, review of decisions, and compensation. Climate change is coming soon to a courtroom near you.

Judges and members of specialized tribunals will need resources to respond to climate litigation. In this series of reports, ADB has two overarching objectives:

I. Supporting judiciaries and legal professionals by sharing knowledge and ideas. Although this report uses the term "judges," may other legal professionals are sitting in tribunals and commissions throughout Asia and the Pacific who need information about climate change. While these tribunals and commissions may be limited to exercising quasi-judicial powers, they are important components of their national legal system. These tribunals and commission apply similar standards of rigor to evidence and procedure as courts, and their findings have valuable impacts on climate change regulation.

II. Showcasing climate and environmental jurisprudence from Asia and the Pacific. We believe this sharing of information and enrich the global discourse on climate litigation and regulation."

11. Apart from sharing knowledge and ideas, the ADB report showcases climate and environmental jurisprudence from Asia and the Pacific and summarizes the effect of climate litigation and its basis in the following words:

"Climate litigation in Asia is also more likely to occur as public interest litigation, founded on a constitutional or statutory right. South Asia boasts excellent examples of environmental constitutionalism-rights-based environmental litigation. In such cases, courts take a more liberal approach to standing because petitioners can hinge their petitions on constitutional rights to life or the environment. It helps that many jurisdictions across Asia and the Pacific have modern constitutions that embed rights. (Report Three surveys positional rights across the region.)

In our view, judicial approaches and principles applied in environmental constitutionalism can also be applied in the climate change context because climate change threatens natural rights, including the right to life. As natural right exist regardless of constitutional and legal gaps, judicial reliance on them could prove fruitful, and Asian jurisprudence has much to say on this topic. For example, in 1993, the Philippine Supreme Court declared that the right to a balanced and healthful ecology "concerns nothing less than self-preservation and self-prepetuation." Such rights, therefore, "need not even be written in the Constitution for they are assumed to exist from the inception of humankind".

12. A reference to the report has been made in order to establish that climate litigation is on the rise in Asia and the courts are leading the way in the area of rights-based environmental litigation. Since in most of these countries including Pakistan the source of these rights is derived from the Constitution, the ADB report describes this area of climate litigation as environmental constitutionalism. In conclusion, Report One refers to the blunt plea of Greta Thunberg, a youth climate activist-at the World Economic Forum in 2019, who said that:

"Adults keep saying we owe it to the young people to give them hope. But I don't want your hope. I don't want you to be hopeful. I want you to panic. I want you to feel the fear I feel every day. And then I want you to act. I want you to act as if you would in a crisis. I want you to act as if the house was on fire-because it is."

And alludes to the important role of Courts as guardians of justice (and by extension) climate justice:

" Courts are the guardians of justice, rights, and equity. Courts are responsible for referring government decisions and protecting fundamental rights. Around the world, courts are heeding this call. Courts are shaping climate justice y upholding the rule of law, and they are weaving this concept into their national lexicon. In ordering their governments to do their part in responding to climate change, courts are defining what it means to do one's part.

Courts, commissions, and tribunals have an important role to play in making findings of fact about climate science. The rigor applied in these forums, particularly in relation to facts, veracity, and integrity, is persuasive in the halls of government and the world at large.

Judges, commissions, and Tribunal members are expected to make findings of fact and law in an impartial setting. Their findings of fact on climate change hold weight because courts and other semi-judicial bodies are trusted public institutions "

Courts may do just that-ethically and equitably balance economic development with social well-being and environmental protection. Science must underpin these considerations. For justice to be impartial in climate cases, we must clearly see and hear the science."

It relies upon the wise utterance of Elijaih E. Commings (American politician and civil rights advocate in comments made during a congressional house committee hearing) to bring home the concept of inter-generational equity, who once said:

"Our children are the living messages we send to a future we will never see. The question is, what will they leave us and how will we send them into that future? Will we send them strong? Will we send them hopeful? Will we rob them of their destiny? Will we rob them of their dreams? No, we will not do that."

13. The present litigation is an aspect of climate litigation in Asia. More appropriately this litigation seeks climate change adaptation. It hinges on fundamental, human and constitutional rights. The ADB report makes an attempt at defining climate litigation broadly by expanding on the previously authoritative works that have limited the scope of climate litigation to those "cases brought before administrative, judicial and other investigatory bodies that raise issues of law on fact regarding the science of climate change and climate change litigation and adaptation efforts". (United Nations Environmental Programme. 2017. The Status of Climate Change Litigation, A Global Review. Nairobi. p.10), to encompass the following:

"Climate change litigation is defined broadly in this report as any case that is brought before judicial courts and administrative or specialized tribunals that (i) raises climate change as a central issue; (ii) raises climate change as a peripheral issue; or (iii) does not explicitly raise climate change but has ramification for climate change mitigation or adaptation efforts, e.g., recognition of intergenerational responsibility. The figure shows the three elements of the definition."

14. In the recent past, Pakistan has put in place legal frameworks for tackling rapidly depleting water resources as part of broader policies on climate change. The watershed moment was the adoption of National Water Policy, 2018 (The Policy) by the Government of Pakistan. It was described as 'The Declaration of A Water Emergency' and proclaimed as 'our promise to the coming generations'. The preamble captured the grim situation by stating that:

The irrigation network of Pakistan is one of the largest contiguous irrigated systems in the World. The snow-clad peaks of the mountain ranges in the North continuously re-charge the system. The descending snow-melt and monsoon waters flow into the country's Indus River System and its tributaries. Passing through the plateau and the great plains across the Indus Valley, the rivers join up to form the Indus that eventually drains into the Arabian Sea in the South. Irrigated agriculture is the backbone of the country's economy, and consumes around 95 percent of the nation's water resources, the balance is used for domestic and industrial requirements.

With rapidly growing population, Pakistan is heading towards a situation of water shortage and by corollary, a threat of food insecurity. Per capita surface water availability has declined from 5,260 cubic meters per year in 1951 to around 1,000 cubic meters in 2016. This quantity is likely to further drop to about 860 cubic meters by 2025 marking our transition from a "water stressed" to a "water scarce" country (The minimum water requirement to avoid food and health implications of water scarcity's 1,000 cubic meters per capita per year). The situation calls for rapid development and management of the country's water resources on a war footing.

Water resources are inextricably linked with climate and the impending climate change scenario has serious implications for Pakistan's water resources. The changing and unpredictable precipitation patterns may have serious consequences, including flash floods in the north and increasingly prolonged droughts in the south. As the glaciers retreat, more glacial lakes will form, increasing the risk of Glacial Lake Outburst Floods (GLOF), which are already becoming increasingly common and hazardous in the Northern parts of the country. Only by devising and implementing appropriate adaptation measures will it be possible to ensure water, food and energy security for the country as well as minimize the impact of natural disasters."

"But now a water crisis is descending like a thunderbolt. While the continuing increase in population at an annual rate of over 2% combined with rapid and un-regulated urbanization has already pushed Pakistan into the category of water stressed countries, the phenomenon of climate change is causing faster melting of the high altitude glaciers, on which the Indus Basin system is dependent and is also raising sea levels. Pakistan is located in one of the three most vulnerable regions in the world in terms of climate change threats of increasing frequency and intensity of floods, prolonged droughts and the frightening possibility of the melting of the Himalayan Ice cap."

The main concerns were also listed in the Policy as:

Main Concerns

Some of the specific issues concerning the water sector are:

i. Fresh water being a finite resource is progressively becoming more scarce due to persistent increases in its competing demands;

ii. Water scarcity can adversely affect the health and well-being of the people of Pakistan and must be resolutely addressed especially since it has serious implications for the nation's food and energy security;

iii. The geographic location of Pakistan places the country in the heat surplus zone on Earth, putting it high on the vulnerability scale of climate change with considerable increase in frequency and intensity of extreme weather events and erratic monsoon rains (as demonstrated by the unprecedented floods of 2010)

iv. Existing and planned trans-boundary developments on the Western Rivers could further impact water availability to the disadvantage of Pakistan;

v. The "Indus Basin Replacement works" (dams in particular) are approaching the end of their designed life span due to situation. requiring replacement storages;

vi. Different regions in the country are endowed differently with water in terms of precipitation, surface flow and ground water and there is increased stress on the sharing of water resources;

vii. Lack of equity in water allowances of various canal commands is causing water and salt imbalances at a regional level;

viii. Salt balances in irrigated lands are already negative and with the passage of time the soil quality will deteriorate resulting in reduced yields.

ix. Bulk of drinking water requirement is met by groundwater which is depleting and its quality is deteriorating;

x. It is necessary to avoid growing conflicts and social unrest in the country due to water scarcity;

xi. The mandate and roles of the federal and provincial water related agencies need to be reviewed in view of the 18th Amendment to the Constitution;

xii. Concentrated efforts are needed tore-use treated sewage water in order to reduce sweet water demand;

xiii. There is lack of awareness amongst the general public about the impending threat of water scarcity and the huge wastage of sweet water; excessive watering of crops is endemic with total disregard for efficiency and conservation;

xiv. Desalinization of Sea water is a significant source of water, however, no effort has been made for desalinization in the light of technology advances and international best practices;

xv. Irrigated agriculture is indispensable for Pakistan's agriculture and low irrigation efficiency vis- -vis water productivity is a major factor leading to lower growth of the sector;

It has become a national imperative to ensure water security for the people of Pakistan, through a National Water Policy (NWP) laying down the outlines of an integrated water management strategy that can optimize the economic, social and environmental returns on water resources, ensure equitable allocation among its competing demands as well as its judicious use by consumers and safe disposal of post-use effluents.

One of the Policy Objectives related to:

"2.4 Improving urban water management by increasing system efficiency and reducing non revenue water through adequate investments to address drinking water demand, sewage disposal, hurdling of wastewater and industrial effluents."

2.2 Augmentation of the available water resources of the country through judicious and equitable utilization via reservoirs, conservation and environmental needs."

15. This litigation is not all-encompassing regarding entire aspects of water crisis but is limited in extent and focuses on the above two objectives. The Policy recognizes water conservation to be accorded the highest national priority. This Court was compelled to take up the mantle of water conservation because there seemed a woeful lack of follow-up measures following the adoption of Policy. For instance, with regard to 'Drinking Water and Sanitation' and 'Urban Water Management', the Policy observes that:

12. DRINKING WATER AND SANITATION

12.1 Plans and initiatives shall be undertaken to progressively provide access to clean and safe drinking water and sanitation facilities to the urban and rural population of the country.

12.2 Full financial sustainability shall be aimed at for the Urban Water Supply and Sanitation Systems through effective reduction in wastage, theft and non-revenue water allocation and 100% metering, with effective safety-nets for the urban and peri-urban poor. Similarly, urban water tariffs must be revised to ensure financial sustainability.

12.3 The Rural Water Supply and Sanitation Services shall be priced at affordable rates.

12.4 Under no circumstances, shall the quality of drinking water, urban or rural, be allowed to fall below the specified standards. Each agency responsible for delivery of such services shall prepare Quality Monitoring Plans and shall be responsible for their rigorous enforcement.

12.5 The sources of water, surface as well as underground, shall be diligently protected from contamination and always maintained in a healthy state, through enforcement of legislation for controlling water pollution in coordination with provinces.

12.6 In remote area of the country, solar desalination of water will be promoted to provide the communities safe drinking water.

12.7 The groundwater levels have dropped to alarming depths and are falling further - potentially reaching the highly saline ancient sea water level in the coming few years. Alternative sources of surface water need to be urgently developed and adequate ground water re-charge ensured

12.8 Drinking water and sanitation plans will be adopted in line with the National Drinking Water and Sanitation Polices and Sustainable Development Goals.

13. URBAN WATER MANAGEMENT

13.1 Urban water management will elementally be integrated into overall water management of the country.

13.2 System losses in urban areas are a major issue which can be attributed to lower rates of recovery. Recovery will be enhanced and system losses will be reduced to the bare minimum.

13.3 Non revenue water in urban hubs need requires a coordinated effort. Public Health Engineering Department and WASAs will be encouraged to devise coordinated strategies under Provincial Action Plans

13.4 Industrial units and municipal entities will be required to treat effluents and hazardous discharge before disposal

13.5 At present, less than 1% of total wastewater in the country is treated before disposal. Treatment will be promoted at centralized level (in technical terms) at first and will be decentralized in due course of time

13.6 Drinking water supply will be aimed at provision of safe, affordable and sustainable supply of water to every citizen of Pakistan.

16. None of the above goals have been met nor tangible steps taken for their realization. No plans and initiatives have been formulated to give effect to the core objectives laid out in the Policy itself. The directions issued by this Court are related to the very basic and rudimentary knowledge of the area of water management and aim at effective reduction in wastage, non-revenue water allocation and metering. It was felt that the sources of water, surface as well as underground, should be diligently protected from contamination and always maintained in a healthy state. In a shocking revelation, the Federal Government disclosed in the National Assembly that an

overwhelming majority of the cities in Pakistan do not have safe drinking water for citizens (Based on tests conducted by Pakistan Council of Research of Water Resources (PCRWR). The underground water was found contaminated with arsenic, iron, fluoride and bacteria. Similarly, according to the Director General of the Water Management Department, Govt. of the Punjab, Pakistan's available underground water reserves will last 25 years. Due to shortage of canal water, Punjab is also using groundwater for irrigation through tube-wells. The petitioners contended that groundwater levels have dropped to alarming depths and are falling further-potentially reaching the highly saline ancient sea water level in the coming few years. Since the Policy has largely remained a painting - to be looked at, this Court grasped the opportunity with both hands to shake the governments out of their slumber and to nudge them to put the Policy into action.

17. On 20 December, 2019 the Supreme Court of Netherlands handed down "State of the Netherlands (Ministry of Economic Affairs and Climate) v. Urgenda Foundation (Case No.00135, unreported). It observed that Dutch State had done too little to prevent dangerous climate change and that art. 2 (right to life) and art.8 (right to respect for one's private and family life) of ECHR entailed a positive duty to take measures against climate change. The Dutch Government has been ordered to cut greenhouse gas emissions by at least 25 per cent of the 1990 levels by the end of 2020. The decision in Urgenda sets out that even when it is not known when a potential hazard will materialize, states are still required to comply with their positive obligations under Arts.2 and 8 in line with the "precautionary principle". (For fuller analysis, see 2020 PLC 20).

The European Court of Human Rights noted in Jugheli v. Georgia (38342/05, unreported, 13 July 2017) that, "it was within the Court's jurisdiction to assess whether the Government approached the problem with due diligence and gave consideration to all the competing interests."

18. In order to address the adverse impacts associated with global warming, a key goal of climate justice is to put across the effects of mitigation and adaptation in order to promote greater climate equity. A large number of judicial directions in this case relate to mitigation and adaptation measures particularly those aimed at water conservation. Climate change engenders adaptation needs which, in turn, feeds adaptation policies and options which can reduce risks to natural ecosystems by its restoration, to health, livelihoods, food and water with efficient irrigation, green infrastructure, sustainable land use and water management. Thus the twin themes of mitigation and adaptation have to be at the heart of any climate litigation.

19. As the proceedings weared on, the attention of this Court was engaged in a myriad of ways. The realization set in that in order to illuminate the meaning and effect of water justice, the litigation in hand had to transition to supervisory jurisdiction or what is

sometimes referred to in some of the jurisdictions as a continuing mandamus. Called by whatever name, these are novel constitutional remedies when judiciaries deem certain legislative action incompatible with their enshrined fundamental rights. Judicial directives had to be issued on which the executive was required to report back to Court. In order to achieve this and to represent this Court on the ground, a Water Commission was set up on 15.02.2019. The singular objective was the attainment of water justice in motion. Since its establishment, the Water Commission (later redesignated as Water and Environment Commission) has compiled over a hundred reports which form part of the record. The function of the Commission has been unique and takes a paradigm shift from the previously appointed Commissions. It was not set up to compile a report on an environmental issue but in a break from the past, its remit was to undertake actual work and to supervise practical measures so that water justice for the citizens was brought into realization and not left to gather dust in the form of reports and policies. Primarily, the Commission carried into effect the directions of this Court apart from suggesting ways to preserve groundwater level. As explicated, the Commission was also tasked with the issues relating to environmental pollution at a later stage. Recently, in a first, Athens (Greek) appointed a "Chief heat Officer" tasked with giving one of the world's most ancient cities an inhabitable future. Other countries are following suit. Thus there is a growing realization to appoint public officers to deal with climate hazards in order to reverse the tide and to create livable environment.

20. The following narration (in the form of orders of this Court) would showcase the strides which have been made for water conservation and environmental pollution at least within the area comprised in the city of Lahore. The summation has been divided into topics covered during the journey of these petitions. A short prefatory is followed by reproduction of orders passed to ensure that directions of this Court have been implemented.

I. Waste water Sewerage / Treatment Plant:

The Commission ensured the installation of 73 large and medium scale treatment plants at Sundar and Quaid-e-Azam Industrial estate. Furthermore, the Commission ensured stoppage of 400 industrial units which were injecting waste water and sewage waste directly into the aquifer through soaking pits causing severe contamination of groundwater. Recently action has been taken against 46 Sugar industries which have being directed by the Commission to install waste water treatment plants and the process of installation is ongoing.

1. Order dated 05.09.2019:

"A report has been filed by the Chairman Water Commission Lahore which delineates the various steps taken by the Water Commission pursuant to the directions issued by this Court. A summary of the steps which have been taken is as follows:

1. That the quality of ground water is constantly being contaminated by Soaking Pits which is an unregulated undefined method of disposal and has not been covered under the Punjab Environmental Protection Act, 1997. Soaking Pit is a recognized method of contamination internationally.

2. That the EPA provided a list of 223 industries located at Multan Road Lahore Injecting Waster Water into Sub Soil water /discharge of Liquid effluent without treatment the list has been annexed along will the main report.

3. The factories /industrial units/housing society's generally non-compliant with the PEQS Punjab Environmental Quality Standards for Municipal and Liquid industrial effluents as per Notification (120 of 2016) which clearly defines the parameters that require a particular chemical ingredient or containment to be treated.

4. By virtue of the 41 reports and surveys conducted by the focal person appointed on behalf of the Water Commission the Water Commission issued notices to the same and out of 41 industrial units 18 have tendered their affidavit to the following effect:

a. That they will Immediately stop infection of Waste Water / Sewage Waste into Soakage pits.

b. That in case of Waste Water discharge, immediate installation Waste water treatment plants.

c. That in case of Sewage Waste discharge, immediate installation waste water treatment plant and septic tanks.

5. That the Water Commission under the auspices of this honorable court had issued directions to the aforementioned industrial units by virtue of the order dated 29.9.2018 passed in W.P No.231266/2018 by the Lahore high Court Lahore for Installation of Waste Water Treatment Plants.

2. The steps taken by the Water Commission and the supporting staff arc commendatory and would go a long way in ensuring that the future generations of Lahore avail the benefits of clean groundwater and sustainability so that the levels of groundwater can be properly maintained. The learned counsel for Water Commission has taken this Court to the report of Sustainable Development published in the Journal of Pollution Effects and Control which refers to the current situation of Aqueous Arsenic contamination in Pakistan focused on the Provinces of Sindh and Punjab. It also dilates upon the impact of Soaking pits on groundwater table. The following observations are pertinent and are reproduced for reference:

"Punjab province. both the water sources from depths of less than 100 feet and above 100 feet have arsenic contamination problems. In addition, data analysis gathered by UNICEF for 6 wells 3 shallow

and 3 deep in Muzaffargarh Punjab province located at lateral distance of 65 feet to 165 feet apart from each other revealed that arsenic in shallow well 20 to 35 feet deep ranged from 2.2 ug/L in deep wells 100 to 350 feet deep. It was from 61 to 170 ug/L the results suggesting that the increase of arsenic with depth in this specific locality. "

3. The report of Water Commission makes extensive reference to the industrial units which are injecting waste water / sewage through soaking pits into subsoil/discharge of liquid effluents without treatment causing serious contamination to aquifer/groundwater in the district of Lahore. Substantial steps have been taken by Water Commission with the aid of the focal person and a representative of the Environmental Protection Department, Govt. of the Punjab. It has been brought forth in the report that undertaking has been submitted by various industrial units to follow up on the steps which would ensure the treatment plants to be installed in those units so that industrial waste does not contaminate the groundwater through soaking pits. Forty-three industrial units have been identified till now of which eighteen have been scaled. Most of them have furnished an undertaking to comply with the basic requirements of disposal of industrial waste. The Water Commission shall ensure that these units follow up on their undertaking. In case they do not do so, a further report shall he filed on the next date of hearing so that proper action is taken against these industrialists. The D.G Environmental Department is also present in Court and assures that full assistance shall be provided to the Commission in identifying industrial units which are in violation of the environmental standards with regard to the disposal of industrial waste.

4. It is made clear that any action being taken by the Water Commission is on the directions issued by this Court and shall be deemed to be in pursuance to such directions. Therefore, it is reiterated that all public officers and functionaries in the Province of Punjab ought to extend full cooperation to the Water Commission in the fulfilment and discharge of its duties".

Order dated 30.01.2020:

"The Water and Environmental Commission has submitted the report No.43 in which various steps taken by the Commission have been mentioned and elaborated upon. These steps include the sealing of the industrial units which are injecting hazardous pollutants in the ground water. The notice given to he industrial units to compel them to install treatment plants have also been delineated in the report. Pursuant to the notices issued by the Commission an opportunity of hearing was provided to the industries and factories as well as housing societies prior to initiation of sealing operation against the non-compliant industrial units and housing societies. Notices were also issued to the Sundar Industrial Estate and the factories which are operating within that Estate."

II. Securing Land for construction of combined affluent treatment plant at Sunder Industrial Estate.

Order dated 14.02.2020:

"A report has been filed on behalf of the Chairman Water Commission. In that report, it has been pointed out that a combined affluent treatment plant is being set up in Sundar Industrial Estate. However, the learned counsel points out that a chunk of land was earmarked for setting up the treatment plant in Sundar Industrial Estate and it is apprehended that that land may be used for some other purpose. It is directed that the land earmarked for setting up the affluent treatment plant shall not be used for any other purpose during the pendency of this petition before this Court."

III. Action Against Sugar Industry:

Sugar Industry has not cared to install treatment plants for treating the effluents generated during production process. This aspect was brought to fore by Mr. Sheraz Zaka, Advocate in one of these petitions alleging that chemicals such as arsenic etc. were being injected into the ground which is a major source of contamination of groundwater:

Order dated 03.12.2020:

"Mr. Sheraz Zaka, Advocate has appeared in one of the connected petitions and states that there were a number of sugar industries set up in the area of Sargodha/Bhalwal which were contributing to pollution of the groundwater aquifer by injecting the affluent directly into the ground. The D.G E.P.A shall depute a team of officers to visit these industries and to file a report within fifteen days."

Order dated 11.12.2020:

"Learned Addl. A.G has placed on record a notification issued by the E.P.A regarding constitution of a team for visiting sugar industries set up its the area of Sargodha, Bhalwal on the allegation that they are involved in pollution of the ground water aquifer by injecting the affluent directly into the ground. The notification shall be suitably amended to include a member of PDMA Punjab to be involved in the entire exercise."

Order dated 24.02.2021:

"Report also refers to the action taken in respect of 26 sugar industries which have been given a deadline of 2nd March, 2021 for submission of environmental impact assessment along with respective design of the waste water treatment plants. In case compliance is not made of the directions issued by this Court and being implemented by the Water Commission, sealing of the premises of these sugar industries shall be undertaken by the EPD."

IV. Ablution Water Tank:

190 ablution water tanks have been successfully constructed in different housing societies including LDA, PHA, DHA, Cooperative Housing Societies. Data Darbar ablution water tank the very first of its kind and the largest tank has been completed which has the capacity to store 60,000-70,000 gallons per day. This is a novel scheme to save wastage of fresh water as it was realised that perhaps mosques were the places where greatest use of fresh water was being made during ablution process. This scheme saves enormous amounts of water daily.

Order dated 20.12.2018:

"M.D WASA submitted, that thousands of gallons of water is used on daily basis in Mosques and shrine for wuzu and by constructing a water storage tank with the Mosques/Shrine, that water can be stored for watering the plants. He further submitted, that WASA has successfully installed and operated a tank outside of a Mosque in Lahore for experiment. Therefore, P.H.A, L.D.A, WASA and Auqaf Department were directed to prepare plan for installation of water tanks alongside of Mosques/shrine for this purpose."

Order dated 14.07.2020:

"Learned counsel for Water Commission also informs that the project which is underway at Data Darbar for the storage of ablution water is also not being completed owing to lack of funds which are not being released by the relevant department. Learned Addl. A.G shall seek instructions in this regard and inform this Court on the next date of hearing.

Order dated 24.02.2021:

"Further Data Darbar Ablution water tank has almost been completed in which according to the report almost 60,000 gallons of

water has been stored. The lorry hydrants have also been installed and the water tank shall be functional in another couple of days. Learned Addl. A.G submits that an application has been made to the Supreme Court of Pakistan for clarification of the order of the Supreme Court of Pakistan regarding purchase of vehicles."

V. Car wash recycling plant:

Through intervention of this Court the Commission has ensured the installation of 310 Car Wash Recycling Systems. It is pertinent to mention here that the follow up teams have been formulated by the Judicial Water and Environmental Commission from amongst the WASA officials which daily monitor and check the operationality of the car wash recycling plants.

Order dated 29.09.2018:

"It is noted during the arguments and reports submitted by the departments that clean water is being wasted by the petrol pumps/service stations to wash the vehicles. As per report, approximately 400 liters clean water used to wash a vehicle and further the owners of the petrol pumps/service stations (vehicles washing) are not being paid even a single penny from the day first to the WASA Lahore or the Government of Punjab despite the fact, that the state is the owner of the minerals. In this state of affairs, it is directed that the Chief Secretary Punjab shall issue a direction to all the concerns in the following terms: -

That all petrol pumps having facility of service station (Car Wash) and the Car Wash stations owners shall make arrangements for recycling of the water being used for service of vehicle. For this purpose a water tank shall be constructed with the consultation of Engineer."

Order dated 11.12.2018:

"As a first step, WASA and LDA (aided by the Metropolitan Corporation, Lahore) are directed to issue prohibition regarding car washing by use of pipes with an unrestricted supply of water. If at all it is necessary to wash a car, the residents can only do so by storing water in a bucket or other container. Preferably, it should only be done at a validly operated car wash stations."

VI. Use of surface water:

The Commission under the directions of this Court opened 17 out of 24 irrigation channels of the Lahore Branch Canal which remained choked for 35 years. After restoration of Lahore Branch Canal surface water was substituted with ground water as a result of which GOR-I, FC College, Model Town, Race Course Park, Lawrence Garden, Mental Hospital, Punjab University Quaid-e-Azam Campus, Governor House, Aitchison College, Jallo Park are now being irrigated with surface water rather than ground water.

Order dated 29.09.2018:

"The water courses as pointed out through a report by the Additional Director General, PHA, still exist through which the major parks, Governor House and Aitcheson College, G.O.R-I, Lahore can be provided canal water for plantation. Secretary, Irrigation Department shall ensure that the water courses, which are 26 in number, shall be opened within 15 days and a compliance report shall be submitted".

Order dated 20.12.2018:

"The Additional Secretary, Irrigation Department and Managing Director WASA reported, that 26 water courses started from canal are closed and almost become redundant. The Additional Secretary, Irrigation Department, on the next day after inspecting the site submitted, that he will try to re-open the water courses. The Additional Secretary, Irrigation Department, with the help of P.H.A and WASA, by putting utmost efforts succeeded to open 17 watercourses running from canal and presently the Governor House, Aitchison Dollege, GOR-l, Bagh-e-Jinnah (Lawrence Garden) and Jillani Park (Racecourse Park) are being irrigated from the canal water. It was also reported, that the watercourse up to the Model Town Lahore have also been re-opened and presently, the Model Town Park, which is a big one, is being irrigated by the canal water channel. The Additional Secretary Irrigation Department also informed, that a major portion of the water channel starting from canal to Lahore Cantt. is available but is not possible to functional as part of the channel. The Lord Mayor, Lahore, Additional Secretary, Irrigation Department, Managing Director, WASA and CEO Lahore Cantonment Board visited the site and finally they succeeded to open the water channel and presently most of the area of Lahore Cantonment board is being irrigated by canal water.

Learned counsel for the petitioner, on the basis of the report submitted by the Additional Secretary, Irrigation Department, submitted, that because of the order passed by this Court and the efforts made by the MD WASA, Lord Mayor Lahore and Additional Secretary Irrigation Department, more than 22 lac gallons drinkable water daily is being saved.

Irrigation Department and Planning & Development Department, Government of the Punjab was directed to expedite the 'Ravi River front Urban Development project for using the canal water for drinking purpose.

VII. Reuse of treated water for irrigation and washing of roads:

This Court ordered US Denim & Coca Cola (Pvt.) Ltd. to install treatment plants which are now treating approximately 72 Lacs liters of waste water and making it reusable to provide the same to PHA for utilization of horticultural activities and to the Lahore Waste Management Company for washing of roads.

VIII. Issuance of challan for wastage of drinkable water:

It was ordered by the Commission that the bucket of water can be used to wash vehicle. The Commission included washing of pavements, roads in category of water abuses. It is pertinent to mention here that till date 7000 challans have been issued against various violation.

IX. Collection of Aquifer charges from private housing societies all across Punjab:

The Judicial Water Commission with this Court's permission for the first-time imposed payment of aquifer charges on private housing societies. As a result 1.3 Billion rupees were collected for the payment of aquifer charges from various private and public housing societies and the Collection is ongoing contributing to the Provincial Exchequer.

X. Rain Water Harvesting:

The Judicial Water Commission steered two projects in collaboration with WASA one by name of Drainage Sore Point located at Lawrence Road the underwater reservoir which has been constructed over an area diameter of 13 thousand square feet. It shall have the capacity to store 15 Lac gallons of storm water. The funds for the project were withheld by the government departments time and again for which repeated directions were issued on different dates of hearing. Finally the project first of its kind, saw the light of the day and will serve as a remarkable source to replenish groundwater.

Order dated 14.07.2020:

Report No.62 has been filed which relates to the water tank which is part of the project of rain water harvesting and currently is being constructed at Lawrence Road, Lahore. According to the learned counsel for Judicial Water Commission, the water tank is being completed, however, funds which are necessary for its completion are not being released by Government and this creates an impediment in the way of its entire construction. Learned Addl. A.G shall seek instructions as to why funds are not being released. It is made clear that the water tank is being constructed with the active intervention of this Court and the efforts being put in by the Water Commission appointed by this Court. In this regard on numerous occasions this Court had to issue directions for the release of funds which were withheld by the Government and due to which the project could not be completed to this day. However, the entire funds required for its completion are still being withheld by the Government. It is also made clear that the Government including its ministers or any of other functionaries should not take undue credit as being reported in the media regarding ownership of this project and its completion which owes entirely to the efforts by the Water Commission appointed by this Court. However, it is expected that

the Government shall initiate similar projects which are essential for water conservation and for raising the level of aquifer of Lahore".

Order dated 09.10.2020:

"The learned counsel has referred to the report prepared by Pakistan Council of Research in Water Resources regarding groundwater through rain water harvesting. Firstly, according to the learned counsel, the first rain water harvesting will be installed commencing 12th of October, 2020. This report shall be placed before the Vice Chairman, LDA for further action with regard to water conservation as LDA as a regulatory authority is tasked with future projects which have a huge impact on the aquifer of Lahore. The Vice Chairman LDA shall convene a meeting during the next week in which this issue shall be highlighted. Furthermore, LDA shall place on record concrete measures which the LDA seeks to take for the purpose or overseeing future construction but also for enforcing installment of treatment plants in all future constructions to be undertaken within the territory being regulated by LDA."

Order dated 03.12.2020:

"Also the learned counsel for the Commission submits that further funds are required for completion of Lawrence Road water reservoir project. Learned A.A.G shall seek instructions from the Secretary Finance regarding this project on the next date of hearing."

XI. Recharge Well:

Under the direction of the Court the PCRWR and PHA initiated the project of installation of recharge wells for the purpose of water recharge which is under process. On the successful completion of recharge well design the PHA shall install recharge wells in 300 Parks across Lahore.

XII. Water Meters:

There are more than 700,000 connections in Lahore whereas water meters are not more than 40,000. On the direction of the Court WASA expedited the process of installation of water meters and currently the procurement of water meters is at prequalification stage of the bidding process for the acquisition of 7,110,00 meters.

Order dated 29.07.2019:

One of the steps is regarding installation of the meters. It has been brought forth in the report that there are no water meter manufacturers in Pakistan and the meters for the purpose will have to be imported. There is an excessive amount of customs duty which is imposed on the importation of the meters. Learned Assistant Attorney General is present on Court's call and shall seek instructions from the Member Customs as to the possibility of waiver of customs duty after seeking instructions from the Federal Government. This is a matter of national importance and water

saving can only be possible if water meters are installed and people are made aware of the use of water in a more prudent manner. Also, a letter has been produced which has been written by the Planning and Development Board and addressed to the Managing Director, WASA regarding certain formalities to be complied with regarding procurement of the meters. The Managing Director, WASA is present in the Court and undertakes that required documents shall be furnished as early as possible. The M.D, WASA is also directed to expedite the process and lo file its report before the next date of hearing".

XIII. Sealing of Tube wells and reduction in water supply timing:

On the direction of the Court, the Judicial Water and Environmental Commission Sealed 7 tubewells of 2-3 cusec at various location of Lahore. It is pertinent to mention here that the Judicial Water Commission directed WASA to reduce the timing of water supply which has resulted substituted water saving.

XIV. Water Conservation incorporated in various LDA building plans:

On the directions of the Court LDA incorporated construction of two water tanks as mandatory requirements for issuance of completion certificate for all commercial buildings.

Order dated 02.10.2020:

"The counsel for LDA referred to the report filed on the last date of hearing. According to the learned counsel, funds have been allocated by the Authority for construction of two water tanks in Lahore at the cost of 115 Million. Also a project for urban station has been launched and the necessary funds have also been allocated. Building and Zoning Regulations, 2019 have been approved which provide for solar panels to be installed by all the commercial buildings. The counsel for LDA shall place on record a report delineating the steps taken by LDA as well as the duly approved Regulations which provide these measures to be taken. The counsel shall also file a report regarding the steps taken by LDA for the implementation of these Regulations which is the most essential component of the entire project."

XV. Results achieved regarding Water Table:

Due to various interventions initiated by the Court and its Commission working under the auspices regarding conservation, protection of groundwater which included the aforementioned steps which have been taken over time and continue to be taken, some remarkable results have been achieved of which the one which outstands is concluded by a report compiled by the Directorate of Hydrology, WASA. As per the Directorate of hydrology WASA water level was lastly 50.150 meters in 2018 and since then till 2020 it is at 50 meters meaning thereby that there has been no further

depletion of groundwater. This is indeed a living example of water justice in action and goes to show how judicial directions which are result-oriented, can bring about a difference to our environment.

Total Water Saved through the interventions of the Court:

XVI: Formation of Judicial Environmental Commission

Order dated 31.10.2019:

The issue of smog, was dealt with on the last date of hearing and a meeting chaired by the Chief Secretary, Punjab was also brought to the notice of this Court in which it had been decided that the brick-kilns operating on the old technology shall not be permitted to operate from 1st of November, 2019. However, in recent days the condition of smog has deteriorated to an alarming extent. In one report released by an international agency, Lahore has been declared to be the most polluted city in the world.

The proceedings in this Court today have convinced this Court that it is imperative to put in place certain measures for dealing with the issue of pollution which has assumed alarming proportions in the recent days. It is likely to worsen in the coming days and must be dealt with on emergency basis. For the purpose, the Commission appointed by this Court is also designated as the Environmental Commission.

It is directed that all departments of the Govt. of the Punjab shall render proper assistance to the Commission in the discharge of its functions and all proceedings taken by the Commission shall be deemed to have been authorized by this Court. The Commission shall take all measures which are imperative for putting a stop to further contribution to pollution being cause to the atmosphere of Lahore".

XVII: Judicial Orders for Curtailing the Effects of SMOG

Conversion of Brick kilns from bull trench to Zigzag technology all across Punjab:

According to data, brick-kilns are one of the biggest causes of smog which comes to engulf vast areas of Punjab during the winter season. Primarily because they operate on out-dated technology which emits blackish plumes of smoke containing hazardous chemicals and which suspend in the air, particularly during cold weather. The extremely debilitating effect on human health is a matter of medical and scientific fact. As a consequence of the Court orders the Brick Kilns have now reached 100% conversion across Punjab which have been converted from old bull Trench technology to zigzag Technology. It is pertinent to mention here that in order to maintain the percentage of converting brick kilns, the follow-up teams appointed by the Judicial Environment Commission randomly check the brick kilns and if they find them non-compliant seal the brick kilns premises.

Order dated 11.10.2019:

"The report has been filed on behalf of the learned counsel for Water Commission. It is placed on record. Learned A.A.G has also placed on record the minutes of the meeting held under the chairmanship of the Chief Secretary regarding the condition of smog in the Punjab and the measures which have been directed to be taken. The representative of EPD shall also file a report on the next date of hearing as to whether the brick-kilns which are still operating without the new technology have been allowed to operate or not".

Order dated 30.01.2020:

"It is imperative therefore that the brick kilns be converted to the latest technology and for which a timeline has been provided depending upon the various regions which have been divided into zones. The brick kilns which fall within the red zones have been directed to shift to zigzag technology on 30.06.2020. These measures regarding the conversion of the operation of the brick kilns will be followed up meticulously by the Environmental Department of the Govt. of the Punjab. The Secretary Environment shall take appropriate steps for implementing the decisions made in the meeting of the Cabinet subcommittee on smog. A periodic report shall be submitted on each date of hearing by the Secretary Environment or by the EPA which shall be taken up for perusal by this Court".

Order dated 14.07.2020:

"According to the report No.61 filed by the Judicial Water Commission, short term plan has been formulated which includes the shutting down of brick kilns which are running on old technology and which have not converted to zigzag technology. Also

stubble burning which is major cause of environmental pollution should not be permitted and ought to be monitored under the supervision of the Administrative Department and clear directions should go out to the Deputy Commissioners of each district to ensure that no one indulges in stubble burning. Also, Section 144, Cr.P.C should be imposed and no brick kiln should operate during that period. It is also made clear that in case violation is made within the area of a particular District, the Deputy Commissioner of that District will burden the responsibility to answer for that violation and apart from other administrative action, he will be held for contempt of this Court's order. This direction should be passed on clearly to the Administrative heads of the Districts. For the purpose Secretary Agriculture shall convene a meeting and apart from passing of these directions, take measures for strict compliance of the steps which are necessary for the smog to be curtailed".

Order dated 03.12.2020:

"It has been stated in the report that at least 1200 more brick kilns have been converted to zigzag technology. A large number of brick kilns have been sealed which were operating on old technology. The number of smokes emitting vehicles which were challaned have also been given in the report and a substantial amount of fine has been recovered and 1108 vehicles were impounded during operation."

XVIII: Fine Imposed on brick kilns:

Order dated 03.06.2021:

Learned counsel for Judicial Water and Environmental Commission has pointed out that time and again sealing is being done of the brick kilns that were operated unlawfully but they continue to operate and there is no deterrence for them to shut down permanently or to convert to zigzag technology. It is directed that the officer of EPA are empowered to impose fine of Rs.50,000/- to Rs.100,000/- in case any violation is noticed in future."

XIX: Control on Vehicular Emission:

The action against smoke emitting vehicles which includes the number of vehicles which have been checked have reached 39528, number of vehicles which have been challaned are 10466 and the amount of fine which has been imposed is Rs. 11,508,200/- number of vehicles which have been impounded have reached upto 2485. Relevant part of the report highlighting the action against smoking meeting vehicles is reproduced as under:

No. of Vehicles Checked 39528

No. of Vehicles Challaned 10466

Fine Imposed 11,508,200/-

Vehicles Impounded 2485

XX: Vehicular Inspection and Certificate System for Punjab:

Order dated 07.02.2020:

"Dr. Wasim, the Director Planning Unit, Vehicular Inspection and Certification System appeared and according to him centers have been set up across Punjab to determine the efficiency and safety or the public vehicles. However, the remit of the authority does not extend to private vehicles which contribute 90% of the vehicular omission. For the purpose, systems ore being installed and will require some time to do so. However, according to him, the authority is closely monitoring the efficiency and safety of the public vehicles and a six-month inspection is carried out. Be that as it may, the Director shall file a report on the next date of hearing regarding the steps taken for the purpose and the standard operating procedures employed by the authority in this regard".

Order dated 22.10.2020:

"Learned counsel for Water Commission apprised that the Environmental Protection Department did not have the capacity to undertake the challans of vehicles making hazardous emissions as directed by this Court on the last date of hearing. It is directed that the City Traffic Officer, Lahore shall issue directions to the traffic police to ensure that pollution emitting vehicles as indicated by the Environmental Protection Department are not permitted to ply on the roads. All such vehicles shall be impounded and dealt with in the manner specified by this Court in its order dated 09.10.2020. Therefore, the traffic police shall inform the officers of Environmental Protection Department to take the necessary actions. In this regard a mechanism shall be setup between the traffic police and the Environmental Protection Department and the said mechanism shall be placed before the Water Commission for approval."

Order dated 02.11.2020:

"The learned counsel for the Judicial Water Commission has placed on record the minutes of the meeting pursuant to the directions issued by this Court regarding smog is well as traffic congestion. The update of these meetings shall he filed before this Court on the next date of hearing. The Commission shall impress upon the CTO Lahore to ensure that the personnel of the traffic police are prepared to take strict action against the smoke emitting vehicles and imposing fines and impound them as directed by this Court on the previous dates of hearing. The latest report has also been submitted by the counsel for the Commission regarding action against smoke emitting vehicles which shows that the activity has been enhanced substantially and at least 431 vehicles have been impounded. It is directed that the campaign should be pursued vigorously in this regard by the traffic police. It has also been informed by the learned counsel for Water Commission that the meetings are due to be held and the report shall be filed on the next date of hearing."

XXI:E-Challan on Vehicular Smoke Emission:

The Punjab safety authority has been submitting its weekly congestion and encroachment report and the Punjab safe City authorities has been successful in issuing E-Challan for smoke emitting vehicles. The payment of a fine of Rs.2000 is being levied.

Order dated 06.03.2020:

"The learned counsel for the Chairman next contended that issuance of E-Challan system was stalled and require amendments in the Motor Vehicle Ordinance, 1965. These amendments have been proposed and approved by the Cabinet and have to be placed before the Provincial Assembly. Learned A.A.G shall seek instructions on the next date of hearing as to when these amendments shall be placed before the Provincial Assembly for being enacted into law. Some of the major reasons delineated in the report for congestion on the roads are under-age driving, driving by non-license holders, overloading and non-compliance of helmets by motorcyclists. It is directed the City Traffic Police Lahore in coordination with PSCA shall initiate a drive to impound such vehicles on the basis of data provided by PSCA which will ensure that the roads of Lahore are much safer place for all legitimate users. Further, the Excise and Taxation Department is directed to update the complete addresses of vehicle owners and link the data with data maintained by PSCA so that E-Challan system can be improved."

XXII: Substandard Fuels and adoption of Euro IV:

That in context of substandard fuel 491 inspection was carried out and 139 fuel stations were found selling substandard fuel whereas 144 FIR's were filed and 64 persons were arrested lastly 143 fuel stations were sealed. Relevant part of the report is reproduced as follows:

Action Progress

Fuel station inspections. 491

No. of fuel stations found

selling substandard fuel. 139

FIRs 144

Persons Arrested 64

Sealed 143

Order dated 30.01.2020:

"The Deputy Director EPA further stated that a major source of smog and pollution was the fuel use in various vehicles in Punjab which had a high sulphur content. Fuel sulphur was the major contributor

to the environmental pollution and it was imperative therefore that the standard of fuel being used in the vehicles plied in Pakistan be converted to a more refined form of fuel. The learned Asst. Attorney General present on Court's call is directed to file a report on the next date of hearing on behalf of the Minister for Climate Change of the Federal Government apprising the various steps taken by the Federal Government for the import of low-sulphur fuel for use in the vehicles".

"According to the Deputy Director EPA, a Vehicular Inspection and Certification System has been introduced by the Govt. of the Punjab. However, the effectiveness of that system leaves a lot to be desired, One of the effective measures which can be taken by the Transport Department is to compel the vehicles running on diesel to install catalytic converters which are devices meant to be installed for the purpose of pollution control. In most cases, the drivers of diesel vehicles do not follow the compulsory requirement of installing these converters in their vehicles. The Asst. A.G shall ensure the presence of an officer of the Transport Department who is the In charge of the System referred to above on the next date of hearing".

Order dated 07.02.2020:

"The learned Asst. Attorney General apprised this Court regarding steps taken by the Federal Government for adoption of Euro IV standards for diesel and petrol fuels. According to the representative of the Ministry of Climate Change, it falls within the authority of Ministry of Petroleum to do so. In this regard he has referred to an office memorandum whereby the Petroleum Division has been required to submit a summary to the Cabinet for approval. The Asst. Attorney General shall seek instructions from the Secretary Petroleum Division. Government of Pakistan and apprise this Court as to when the summary shall be placed before the Cabinet for approval. It is pertinent to mention that low-grade fuel is a major contributory of environmental pollution and comprises 45% of the pollution that afflicts our environment‖.

XXIII: Fine Imposed on smoke emitting vehicles:

Order dated 02.10.2020:

"This is an application on behalf of Water and Environment Commission regarding the issue of low rate of challan being issued to vehicles which are emitting emission which is hazardous to the environment. According to this application, vehicular emission contributes 43% to the smog in the atmosphere. Firstly, it has been contended by the learned counsel that there is no power in the Environmental Protection Department to impound these vehicles. However, since these vehicles are emitting hazardous pollutants in the environment, it is imperative that Environmental Protection Department should be given power to impound to those public transport vehicles which are unlit for being plied on the roads and are emitting hazardous emission in the environment. It is therefore

directed that Environmental Protection Department, Transport Department as well as Traffic Police shall be empowered to impound these vehicles for a period of three days subject to the fulfillment of the technical specifications to be installed in these vehicles so that these vehicles should not be making hazardous emissions. Thereafter, as suggested by E.P.D, the owner of the vehicle shall be given 7 days time to comply with all the specifications. During that time, the documents of the vehicle shall be kept with the officer of E.P.D for further action in case the compliance is not made. Further, the Administrator of Lorry Adda, Lahore is directed to accommodate all such vehicles impounded by E.P.D. and the Transport Department and make temporary arrangements for these vehicles to be parked in Lorry Adda. The E.P.D/ Traffic department shall be empowered to levy a fine up to Rs.2000 on such violations.

Order dated 03.12.2020:

"The number of smoke emitting vehicles which were challaned have also been given in the report and a substantial amount of fine has been recovered and 1108 vehicles were impounded during operation."

Order dated 11.12.2020:

"The report No. 77 has been submitted by the learned counsel for Water Commission. In this report, the actions taken against the brick kilns as well as the smoke emitting vehicles have been brought forth. It seems that substantial actions have been taken on the directions of this Court for the closure of brick kilns operating on old technology as well as smoke emitting vehicles which shall be continued as before."

Order dated 24.02.2021:

"It also mentions the action taken against smog emitting vehicles against whom a fine of Rs.11,403,550/- has been imposed and recovered whereas 2463 vehicles have been impounded."

XXIV: Strict Compliance of Non-motorized vehicles on Model Roads:

Order dated 02.10.2020:

"It is also submitted that the Commissioner Lahore has designated certain roads as model roads. For the purpose, it has been provided that public transport vehicles shall not be able to ply on these roads. These vehicles have been termed as non-motorized vehicles. Since the Commissioner, Lahore has already passed an order, it is directed that strict compliance of this order shall be ensured by the Commissioner, Lahore and these vehicles shall not be allowed to enter or ply on the model roads so designated by the Commissioner."

XXV: Installation of Dry Scrubbers in steel re-rolling mills:

The number of smokes emitting industries in the district of Lahore against which action was initiated and industrial units were sealed on emission of excessive smoke and particulate matter were 223. Action against smoke emitting industries is reproduced as follows:

Brief Description Progress

No. of Inspections Conducted 715

Units working without emission

control system 167

Steel Industry operating

without scrubber 142

No. of units sealed on emission

of excessive smoke /

particulate matter. 223

No. of FIRs lodged on smoke

emission /violation of PDMA

directions. 78

Order dated 05.08.2020:

"The report mentions the update on the issue of pollution causal by steel melters. It has been informed that the Steel Melters Association met with the Chairman of the Water Commission and undertook to put in place certain instruments which are required to be installed so that the pollution can be curtailed substantially. A period of ninety days has been given to the steel melters to do the needful. A continued oversight shall be done by the Chairman Water Commission so as to follow up on the promise made by the Association on behalf of the steel melters".

Order dated 24.02.2021:

"Report No.82 has been filed by the Water Commission in which various steps have been mentioned which have been taken by the Water Commission for the control of smog in Lahore. At least 223 industries were sealed for emitting environmental hazardous material as pollutants."

XXVI: Installation of Anti-Smog towers on experimental basis:

Order dated 02.10.2020:

"Dr. Quratulain Syed, D.G PCSIR has appeared and submits on behalf of the Federal Minister for Science and Technology that three

to six months are required for the PCSIR in collaboration with Engineering Development Board to develop anti smog towers in Pakistan. It is directed that PCSIR shall commence the work for development of anti smog towers and it is expected and hoped that the Minister for Science and Technology shall take personal interest in pushing ahead the project so that it can be completed within the timeline. A preliminary report shall be filed by D.G PCSIR within the next one month."

XXVII: Sprinkling and mechanical cleaning on roads for controlling smog:

Order dated 07.02.2020:

"It has been apprised by Mr. Anis Ali Hashmi, A.A.G as well as counsel for WASA that Lahore Waste Management Company (LWMC) has the ability to carry out sprinkling and mechanical cleaning which is an essential ingredient in controlling environmental pollution. In this regard, the water being stored in the tanks built with the various mosques in Lahore can be utilized for the purpose. The learned Chairman Water Commission shall convene a meeting with the MD of LWMC as well as PHA to devise a plan for the water stored in those tanks to be utilized for the purposes of sprinkling and mechanical clinic. According to Deputy Director this part constitutes an important element in controlling the environmental pollution and smog which accumulates during winter season. A report to this effect shall be filed by both the LWMC as well as PHA and in that report a comprehensive plan shall be laid out for approval by this Court".

Order dated 09.09.2020:

"In this regard the representative of E.P.A has produced extracts which show that modem technology in the form of antismog towers have been installed and are successfully operational in different cities. They have significantly contributed to lowering the level of smog and pollution in these cities. Learned Addl. A.G shall also assist this Court on this aspect after making inquiries from the department which is the most relevant for determining suitability of these towers. Mr. Usman Naeem, Country Economist of International Growth Centre (IGC) an NGO which is working in collaboration with LUMS has filed a report regarding proposed design for the anti-smog towers. He undertakes to assist this Court on the next date of hearing regarding effectiveness and evaluation of anti-smog towers which have already been set up in various cities of the world. The learned counsel for the petitioner as well as counsel for Water Commission shall also assist this Court on the effectiveness of these towers and whether a direction should go out to the government for their erection in various parts of Lahore."

XXVIII: Imposing of fine on Stubble Burning all across Punjab:

Order dated 30.09.2019:

"Notice, Learned A.A.G accepts notice and shall seek instructions from the Secretary Environment as well as Environment Protection Department, Government of the Punjab with regard to the steps taken with regard to the installation of the technology by the brick kiln owners so as to stop in time the smog being accumulated in the winter months. Also, an issue has been raised by the applicant regarding burning of the crops which is also a contributory to the smog".

Order dated 30.01.2020:

"With regard to stubble burning, Mr. ljaz Majeed Deputy Director, EPA apprised this Court the actions taken in this regard by the Environment Department. It was admitted by the Deputy Director that stubble burning was a major source of smog during the winter season. For the purpose, mechanized methods will be put in place by the Govt. of the Punjab so that the farmers and agriculturists do not have to resort to stubble burning. Be that as it may, it is directed that the Environment Department shall ensure that the stubble burning activities are not carried out during the period staring early October and the implementation of the measures to forestall such acts by the farmers will be made in coordination with the other departments of the Govt. of the Punjab. A fresh report regarding said measures shall be placed before this Court by EPA within a period of one month".

Order dated 05.08.2020:

"It has been mentioned a meeting was held with regard to the smog issue in which the Secretary Agriculture. Government of the Punjab and others were present. It was decided that the Environment Protection Department shall write a letter to the Home Secretary, Government of the Punjab for issuance of an order under Section 144, Cr.P.C., prohibiting the stubble burning etc. However, it is directed that Water Commission shall hold a meeting at least once a week to oversee the entire issue and Environment Protection Department is directed to write a letter within the next three days on which the notification under Section 144, Cr.P.C shall be issued by the home Department. It has further been mentioned in the report that mechanized cutting of the stubble is also being undertaken by the Agriculture Department so that the farmers do not indulge in burning of crops which is a major cause of smog in the winter. This issue shall also be continued to be overseen by the Water Commission".

Order dated 22.10.2020:

"The Water Commission has filed the follow up report No. 70. The primary concern of the report is regarding stubble burning and it has been mentioned that despite regular meetings under the chairmanship of the Chief Secretary Punjab and the Water Commission the act of stubble burning is continuously unabated. According to the report the agriculture department is not fully

compliant of the directions of this Court. For the purpose a joint meeting of the Water Commission shall be held with the Senior Member Board of Revenue Babar Hayat, Environmental Secretary and D.G Provincial Disaster Management Authority. The Secretary Agriculture shall also join the meeting. In that meeting the directions of this Court shall be placed before the participants of the meeting by the Water Commission and who shall also be impressed with the urgency of the matter. It has been reported that a press conference was held by these officers and listed the actions that the Provincial Government shall appoint to take. However, the officers attending the meeting will be apprised by the Water Commission that substantial steps have already been taken on the directions issued by this Court and any further actions shall be taken by the office's of the Provincial Government under the directions of this Court. On the last date of hearing it was also directed that PDMA shall work in clear liaison with the Water Commission. It is made clear that any further action in this respect shall be jointly taken by the officers of the Provincial Government duly nominated and the Water Commission and a report shall be placed before this Court on the next date of hearing. The meeting shall be held on Monday at a convenient time and the A.A.G shall convey this order to the officers who shall be required to attend the meeting. Thereafter a joint press conference shall be held by the officers as well as the Water Commission in which the Press shall apprised of the steps taken on the directions of this Court as also to give publicity to the clear directions regarding stubble burning over a period of time in the past issued by this Court. The A.A.G shall also make arrangements for the publication in the newspapers regarding directions issued by this Court with regard to the stubble burning. This publication shall be made during the next week for at least three consecutive days and will touch base with the relevant officer of the Govt. of the Punjab who shall ensure the publication to be made."

Order dated 03.12.2020:

"The learned A.A.G states that the funds for construction of Data Darbar ablution tank have been released and it is likely to be completed soon. The Director PDMA appeared and states that teams were constituted for making a survey as directed by this Court on the last date of hearing. It was indeed found that violations were being made by the farmers in respect of stubble burning. The team touched base with the Deputy Commissioner as well as D.P.Os of districts Khanewal and Nankana Sahib etc. and were apprised that FIRs have been registered against the persons involved in stubble burning and some of them had also been arrested. However, since the offence was bailable. It was difficult to create a permanent deterrence to the people of these areas to restrain them from stubble burning. It seems that the registration of FIRs is not enough and it would be appropriate that further deterrence be created to dispel the people to indulging stubble burning which is rampant during this month and which seriously contributes to smog. For the purpose it is directed that a fine of Rs. 50,000/- shall be imposed by the

Deputy Commissioner of the concerned district and shall be deposited in the account maintained with the PDMA and shall be utilized for the purposes of the activities and official business being carried out by PDMA. This shall be conveyed by the Director PDMA as well as A.A.G to the D.Cs of the districts of Punjab for compliance."

XXIX: Ban on Polythene Bags and levying of fine on its use:

Many attempts over the years have been made to do away with the extremely hazardous polythene bags and their use which is rampant in all retail and wholesale business. According to studies, they are not biodegradable and cause a litany of problems impacting the environment and so their use is being abandoned all over the world. They are extremely dangerous for the marine life which feeds at least 1 billion people daily. It was imperative, therefore, to enforce measures to prohibit use of these bags and to inculcate a behavioural shift away from their use in the general public. Restraining the manufacturers from producing them forthwith was not the answer, as that would have put a large section of the workforce out of employment. Thus, as a first step, a restraint was placed on their use in retail outlets in Lahore. For the purpose a timeline was given by the Court after which enforcement orders were to take effect. Over time, these measures have yielded remarkable results. The use of plastic bags has diminished to a large extent and simultaneously there is a realisation amongst the public that these bags pose a grave threat to our lives and must be disused. A paradigm shift has taken place not only environmentally but culturally as well. The order has now been extended to the entire Province of Punjab.

Order dated 07.02.2020:

"This is an application for compelling Govt. of the Punjab to place an immediate ban on the manufacturing, sale and usage of polythene bags in the Province of Punjab. Learned counsel for the applicant refers to two orders passed by this Court which required the ban to be imposed. Be that as it may, notices are issued to the respondents on this application. In the first phase, it is directed that all major departmental stores and wholesale outlets shall take immediate steps to stop the use of polythene bags at their stores. For the purpose, a time of two weeks is granted in which alternate arrangement shall be made by these stores to shill to alternate modes. The EPA is directed to convey this order to all major stores in Lahore who shall display the terms of the order at a prominent place to make it known to the shoppers and customers. A compliance report shall be filed by EPA in this regard. The Deputy Director EPA apprised this Court that oxobiodegradable bags have been mode compulsory by the department for compliance by the major departmental stores in the city. This has yielded substantial results. However, it is imperative that the polythene bags in all forms ought to be banned completely as they are a major source of biodegradation and environmental degeneration. According to the

officer, various meetings have been held of all the stakeholders and a complete implementation of the proposed bank is likely to take some time".

Order dated 24.09.2020:

"It was omitted in the last order that the ban on use of plastic bags has been extended in the whole of the Punjab. That order is being made today and a direction is issued to all concerned specially the Environmental Protection Department to enforce the ban at all cost. It is also ordered that the ban on the use of plastic bags shall be extended on the Motorways and for the purpose, E.P.D shall touch base with the Motorway police regarding service stations along the Motorways".

Order dated 22.10.2020:

"Learned A.A.G has also placed on record the report of the D.G Environmental Protection Agency regarding implementation of this Court's order of banning of plastic bags. The action taken in various directions has also been placed on record. It is directed that the action shall continue until the plastic bags are completely eliminated and a report shall be filed after fifteen days by the E.P.A."

Order dated 11.12.2020:

"With regard to the action against use of polythene bags. It has been stated by the learned counsel for Water Commission that the sealing of the premises is not a sufficient deterrence and in addition thereto suggests imposition of fine be also allowed to be made on retail outlets who are using polythene bags. It is clarified that in case a retail outlet is found violating the directions of this Court a certain period of time of one week should be given to that outlet to comply with the directions of this Court and thereafter the process of sealing should be done. Also the officers of Environmental Protection Agency shall be empowered to impose a fine between Rs.5000/ to Rs.20000/- on any retail outlet found involved in the violation."

XXX: Restraining to Cutting of trees/orchards:

Order dated 02.04.2021:

"It is further directed that till the next date of hearing, no further trees shall be cut down by any of the sponsors, which intend to set up a housing society on and land either in their entitlement or any other till the next date of hearing. This order shall be conveyed by the learned Addl. A.G as well as Asst. Attorney General present in Court to the relevant authorities".

XXXI: Data Collection of Industrial Units to control excessive emission of smoke:

Order dated 24.02.2021:

"Mr. Usman Naeem IGC/NGO has appeared and states that significant progress has been made for installation of the instruments in the steel and textile industries in and around Lahore. It is directed that Mr. Usman Naeem shall hold a meeting with learned Addl. A.G Mr. Anis Ali Hashmi and apprise him of the next steps to be taken and if at all there are any impediments in the way, learned Addl. A.G shall contact the relevant Government Department for easing out the process so that it can be expedited. Learned Addl. A.G shall also initiate steps so that Mr. Usman Naeem can also have a meeting with the Secretary Agriculture as there are certain important suggestions which are necessary to be shared with the Secretary in respect of control of stubble burning in the Province of Punjab."

21. Courts in Pakistan have been at the vanguard of providing climate justice to the people. It must be borne in mind that, in essence and as a primary duty, it is the obligation of the State which is tasked to take climate action and other decisions with negligible climate impacts. It is only the weak enforcement of climate policies and existing climate legislation that leads litigants to sue for violations of constitutional rights. In a recent case involving the establishment of new cement plants in the negative area falling within the Districts of Chakwal and Khushab, the Supreme Court of Pakistan referred to Water Justice in a case reported as D.G Khan Cement Company Ltd. v. Government of Punjab through Chief Secretary, Lahore and others (2021 SCMR 834) in following words:

Water Justice

17. According to our National Climate Change Policy, 2012 water resources are inextricably linked with climate; this is why the projected climate change has such serious implications for Pakistan's water resources. Freshwater resources in Pakistan are based on snow and glacier-melt and monsoon rains, both highly sensitive to climate change. This will further exacerbate the already difficult situation of a water-stressed country facing demand increases due to population growth and increasing economic activity. To address the impact of climate change on water resources and to enhance water security, the Government of Pakistan has proposed Integrated Water Resource Management to provide regulatory frameworks, water licensing, slow action dams, artificial recharge especially for threatened aquifers, adoption of integrated water resource management concepts, and ensuring rational ground water exploitation by avoiding excessive pumping. Agriculture is central to human survival and is probably the human enterprise most vulnerable to climate change. The hydrological cycle is similarly likely to be influenced by global warming, necessitating the agriculture and livestock sectors, particularly in rain-fed areas, to adapt to climate change. The World Water Forum, laying down the concept of water justice, declared[30] that the State should exercise stewardship over all water resources, and protect them, in conjunction with their associated ecological functions, for the benefit of current and future generations, and the Earth community of

life.[31] Because of the close interlinkages between land and water and the ecological functions of water resources, any person with a right or interest to use water resources or land has a duty to maintain the ecological functions and integrity of water resources and related ecosystems.[32] The precautionary principle should be applied in the resolution of water-related disputes. Notwithstanding scientific uncertainty or complexity regarding the existence or extent of risks of serious or irreversible harm to water, human health or the environment, judges should uphold or order the taking of the necessary protective measures having regard to the best available scientific evidence.[33] Consistent with the principle in dubio pro natura, in case of uncertainty, water and environmental controversies before the courts should be resolved, and the applicable laws interpreted, in a way most likely to protect and conserve water resources and related ecosystems.[34] In adjudicating water and water-related cases, judges should be mindful of the essential and inseparable connection that water has with the environment and land uses, and should avoid adjudicating those cases in isolation or as merely a sectoral matter concerning only water.[35] Water justice requires appreciation that there are no easy, simple or singular solutions to the water crisis, and that water problems cannot be resolved through technical solutions alone but require broader recognition that they are inherently ecological, political and social issues simultaneously."

22. Since this is an on-going supervisory jurisdiction with judicial directions, these petitions cannot be brought to an end for now. There is an overriding public interest which justifies the issuance of constitutional remedies to compel executive action to achieve climate goals. Much has been gained and in order to sustain and entrench it, further supervision will have to continue.

Adjourned to 09-09-2021.

MH/H-6/L Order accordingly

Case-4: Ms. Imrana Tiwana And Others---Petitioners

P L D 2015 Lahore 522

Before Syed Mansoor Ali Shah, Mrs. Ayesha A. Malik and

Muhammad Yawar Ali, JJ

Ms. IMRANA TIWANA and others---Petitioners

versus

PROVINCE OF PUNJAB and others---Respondents

Writ Petition No.7955 of 2015, decided on 17th April, 2015.

Dates of hearing: 6th, 7th, 8th, 9th, 10th, 13th, 14th, 15th, 16th and 17th April, 2015.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Through this environmental public interest petition, concerned citizenry of Lahore, has invoked the constitutional and equitable jurisdiction of this Court to challenge the constitutionality and legality of the Signal Free Corridor Project (Project) proposed and initiated by the Lahore Development Authority (LDA).

2. The challenge rests on the following fundamental propositions of constitutional importance:--

(i) Whether the foundational constitutional values of democracy, equality, political, economic and social justice; informed with fundamental rights and the principles of policy, recognize and acknowledge environmental justice and the international environmental principles as natural and integral concomitant of these values, rights and policies?

(ii) Whether, the above constitutional values, rights and policies underline the constitutional requirement of an independent and autonomous regulator (in this case: The Provincial Environmental Protection Agency) to safeguard and protect the most primordial of fundamental rights i.e., right to life, liberty and dignity of the people (Articles 9 and 14), by protecting the most essential element of human life i.e., the environment?

(iii) Whether the constitutional recognition and command to establish a third tier of elected self-government under Article 140A of the Constitution, actualizes the constitutional vision of a federalist state and of guaranteeing political, economic and social justice, encouraging local government institutions (Article 32), the

right to liberty, dignity and political participation (Articles 9, 14 and 17)?

(iv) Whether, the constitutional ethos of Federalism (reinvigorated through the 18th Constitutional amendment) introduce a new era of constitutional maturity complimenting the traditional doctrine of horizontal separation of powers between different organs of the State with a more enlightened constitutional design that in addition accounts for vertical and internal separation of powers within the organs of the State? And whether there exists vertical separation of powers and corresponding autonomy between the elected Provincial and Local Governments?

(v) Whether devolution and vertical separation of powers envisaged under Article 140A of the Constitution allows Lahore Development Authority (LDA), a provincial body, to trump and usurp the powers of the elected local governments, which firmly rest on constitutionally devolved political, administrative and financial responsibility and authority under Punjab Local Government Act, 2013 ("PLGA) with clearly delineated powers ?

(vi) Whether Provincial Legislature can curtail or abridge the powers already devolved under Article 140A and PLGA to the local governments by introducing amendments in the LDA Act or through introducing other provincial laws?

3. The Signal Free Corridor Project is a project that redesigns and remodels existing roads that start from Qartaba Chowk (roundabout) and end at Liberty Market Main Chowk spread over 7 K.Ms of the existing Jail Road and Main Boulevard. Remodelling would convert this stretch into a signal free, high speed expressway by introducing two underpasses at the Shadman and Fawara Chowks and seven U turns and five overhead pedestrian bridges at a cost of approx. Rs.1.5 billion of the taxpayers' money.

4. The petitioners submit that LDA in spite of having filed an Environmental Impact Assessment ("EIA) with the respondent Provincial Environmental Protection Agency ("EPA), has in total disregard of the law, that is, without seeking the approval of EPA under Section 12 of the Punjab Environmental Protection Act, 1997 ("PEPA) mobilized the works and illegally commenced the construction of the Project. During the course of hearing, the Advocate General, Punjab confirmed that the EIA approval has been finally granted by the Director General, EPA on 19-3-2015 when the Project had commenced and after some of the petitioners had already approached this Court on 26-2-2015 by challenging the commencement of the Project without approval of EIA and before the availability of the EIA Report being made Public. It appears that EPA hurriedly granted the approval and placed it on the record, because the Court had taken cognizance of the matter and had questioned the LDA and the Provincial Government to explain how the Project had commenced without an EIA approval. The petitioners in the instant case and the subsequent connected petitions (all of them

being public interest petitions) have also challenged the said decision of the DG, EPA.

5. The petitioners, as a community of concerned citizens, have vehemently urged that EPA, currently, is not an autonomous statutory environmental protection agency but a mere Attached Department of the Provincial Government, functioning on the dictates of the Provincial Government. It is argued that EPA suffers from complete Regulatory Capture by the Provincial Government and hence the impugned decision is a result of dictation and non-application of an independent mind. It is argued, that it is not possible for the beleaguered EPA to independently dispense environmental justice, within the statutory framework of PEPA, the Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000 ("Regulations) and the Environmental Law Guidelines, namely: (i) Policy and Procedure for Filing, Review and Approval of Environmental Assessments. (ii) Guidelines for the Preparation and Review of Environmental Reports and (iii) Guidelines for Public Consultation. EPA also falls short of protecting the constitutional values of social justice and the fundamental rights under the Constitution. As a consequence, it is argued, that the entire EIA approval process, as well as, the preparation of the EIA report by the consultant is materially deficient and defective.

6. The petitioners, as concerned citizens, have also urged this Court to take notice of the sheer absurdity and irrationality of the Project. It is submitted that Rs.1.5 billion, of the tax payers' money is being spent to convert a 7 km road into a high speed corridor for only 8% motorists of the city, with no regard for the pedestrians, cyclists and other non-motorized persons who are in majority. It is also emphasized that the selection of the Project is at the cost of several other more important development projects in the Lahore Division. They vehemently submit that the sanction of the Project by the LDA, was without application of mind as is evident from the minutes of the meeting of LDA. They pleaded that while the patients languish in hospitals without doctors and medicines and government schools function without teachers, the need to spend Rs.1.5 billion on a small stretch of road, in the most developed part of Lahore, is cruel, inequitable and undemocratic. They urged that such nakedly irrational development policies are subject to judicial review.

7. On the role of LDA versus the Local Government, it was urged that after devolution of political, administrative and financial responsibility and authority to the elected representatives of the local government system under Article 140A of the Constitution, and after the provincial legislature having vested the municipal service relating to urban development under PLGA in the Lahore Metropolitan Corporation ("LMC), LDA has no constitutional authority to initiate the Project within the devolved political, administrative and financial space of LMC. It is submitted that any such Project can ONLY be initiated and developed by the concerned elected Local Government.

8. It has been argued that the conclusions and recommendations drawn by the EIA Consultant are based on an inadequate, incompetent, unsubstantiated and biased appraisal of the Project, and are liable to be disregarded. The EIA, prepared by LDA, is itself a vacuous document and persistently violates the Guidelines which inform its preparation. The petitioners have given a detailed list of areas in which the EIA falls short of the legal requirements. The summary of their submissions is as under and references therein are to the EIA Report submitted by LDA before the EPA:--

HOW THE PROJECT EIA FALLS SHORT OF LEGAL REQUIREMENTS[1]

Sr. No.	Requirement with source	What has been done in EIA	Comments
1.	Project Description: Objectives; alternatives considered and reasons for rejection; description of location (with maps and photos of specific locations and layout) including land uses on site and surroundings, details of population centers and nearby dwellings, road access, topographic and vegetation features of site; description of project, including drawings showing project layout, components, etc. (EIA-G: para 2.3, p.6-7 and para 5.2, p. 24)	- Ferozepur Road MBS Project explained in more detail than actual Project (para 2.1, pp. 11-12) - States that the link requiring improvements plays important role in traffic and transport system of Lahore. - On account of its importance, crossings need improvement, and making it signal-free are inevitable. (para 2.2, pp. 12-13) - No map or photos whatsoever have been given of location. No detailing of land uses on site and surroundings, no details of population centers, nor of dwellings, road access, topographic or vegetation. - As for description of project layout and components, it is done in point form	Important aspects of Project Description are omitted from the EIA, including a representation of the existing site (location) and description of the Project components. Hence, from reading the EIA, one is not certain of what the location looks like (from various perspectives, including vegetation, land use, population centers etc.) nor is one certain of what the completed Project will look like, as the diagrams provided are glaringly insufficient, unclear, and incomplete The existing traffic situation which presumably

(p. 18 for Jail Rd. and p. 22 Main Boulevard). Three miniscule layout drawings are provided (pp. 19, 20, 23), which are not legible and provide no details of what the Project will look like. These drawings do not cover the entire project as described in the pints. Alternatives are discussed and rejected in two pages (pp. 16-17). No qualitative or quantitative analysis goes into this evaluation and rejection. Discussed in more details at Sr. No. 3 below.	mandates such a major transport project is provided in the form of two diagrams for average daily traffic for Shadman Chowk and Fawara Chowk at pp. 14-15. These diagrams apart from not quoting the source of the data, fail to interpret the data presented in any sense whatsoever. What do the figures actually mean in terms of traffic congestion? What is the extent of congestion presented by these diagrams, and what times of the day? Do these stats justify the Project, and if so, how? The Lahore Master Plan 2021, has the following to say of Project such as the present one, in para 8.11.2, p. 8-26: "LDA made a preliminary effort to produce a Manual of Traffic Engineering, but that too is not being utilized because of lack of expertise and knowledge on the part of road building agencies and local consultancy

houses. Major problem lies in project preparation and planning. Project feasibilities are seldom based on traffic studies. For major projects, traffic counts are usually carried out to save from the scrutiny of the approving agencies, their utility for design solutions is witnessed in rare projects. This results towards wasteful expenditure on projects with least priority of traffic demand. It is happening because of lack of expertise on the part of sponsoring and approving agencies on one hand and political compulsions on the other. Recently completed LRRP of ex-MCL is a classical example where more than Rs.3.4 billion are spent on a project of urban roads without carrying out any traffic study, traffic demand analysis justifying its engineering feasibility, traffic impact assessment

			ensuring its operational efficiency and economic and financial viability for any of its components. The EIA is more a predetermined justification for the Project. It does not comprehensively address the issue it is trying to address (traffic congestion on roads) as there is no validation of the problem being resolved by signal-free corridors.
2.	Scoping: Described as "a vital early step" and "a process of interaction between the interested public, government agencies and the proponent. Scoping refers to the process of identifying, as early as possible: * the appropriate boundaries of the environmental assessment; * important issues and concerns; * the information necessary for decision-making; and * the significant impacts and factors to be considered. (EIA-G: para 2.4; p. 8) *Read further from this section* Role of Stakeholders in Scoping: Includes, environmental practitioners and experts, those affected, and the wider community. *Read from EIA-G: para 2.5, pp. 9-10)* Note: The Punjab EP Act, 1997, and its	From a reading of the EIA, it is apparent that a scoping exercise has not been undertaken. There is a section devoted to public consultation (section 6). It stresses the importance of the consultation process in the assessment process (para 6.1, p. 91), however, it is apparent that a meaningful consultation process has not been carried out for the Project. The EIA states at para 6.2.1 (pp. 91-92) that there are no primary stakeholders for the improvement of Jail	It is obvious from the reading of the Public consultation section of the EIA that a meaningful engagement with stakeholders has not been carried out. Whereas the EIA-G, envisage a two-way flow of ideas, knowledge, and concerns, between those affected, the wider community, environmental experts, and the proponent, so as to highlight important issues and concerns, the EIA evidently takes a non-serious and paternalistic approach to scoping. There is

regulations and guidelines envisage a two-tier public participation process. The first and most important of which is to take place during the preparation of the EIA. This is evident from the Scoping requirements laid down. It is at this stage that meaningful and protracted input can be gained from various segments of society, especially those to be directly affected by the proposed projects. The second is the requirement to hold a public hearing on EIAs, and solicit comments/objections on proposed projects. Given the inherent constraints of such a hearing, and the fact that the scope and nature of the Project has already taken concrete form at this point, this public participation process is far less effective in addressing genuine community concerns.	Road and Main Boulevard. It groups local residents, shop keepers, vendors, pedestrians, and businessmen of the adjoining markets as secondary stakeholders. Stakeholders are identified in Table 6.2 (p. 93) and it appears that the Consultant has itself surmised as to what their various concerns might be. It is stated that stakeholders (groups/individuals) were briefed about the project, and eventually their queries about the project were answered to their satisfaction (para 6.3.1; p 94). It goes on to state that 77% of the respondents favoured the Project whereas 23% were against. (para 6.3.3, p. 94). In para 6.4, pp. 95-96, a summary of the comments and discussions with stakeholders is provided. It is stated that most of the public considers improvement of roads/provision of underpasses to be a priority project in the city. Concerns were raised as to road crossings being disturbed (eliminated) by the	no mention of community groups, experts or NGOs having been consulted. No criteria are given for selecting stakeholders, and the atomised individuals consulted seem to have been selected at random. Just some of the obvious stakeholders in the Project (some of which have been mentioned in other parts of the EIA) include Kinnaird College, Lahore College for Women (and other education providers along the Project route), Omer Hospital (and other hospitals/clinics on the Project route), owners of major shopping malls and plazas on the route, residents of Gulberg and Shadman, the custodians of the Christian cemetery on Jail Road, urban planning and environment experts/NGOs, to name a few. It is evident from the overwhelming presence of concerned citizens and

Project; and employment in construction phase going to persons from outside the Project area. In response, it is stated that "all fears of the community were alleviated , and that positive impacts will abound from the Project. It states that "all the people showed their satisfaction for the improvement of jail road and main boulevard/in the area. In para 6.5, p. 96 it is stated that "several issues were raised by the community during the consultation, which were immediately addressed by the Consultants' officials. Residents of the city were very much supportive to the implementation of the proposed project. After due consideration of the comments/observations of the people, it is stated in para 6.5, p. 96, inter alia, that "In the absence of crossings by pedestrians, the comfort level presently available will be disturbed, therefore pedestrian bridges should be take-up for completion simultaneously;	experts (many of whom filed comments/objections on the EIA) at the public hearing, that the Proponent and Consultant had not carried out a meaningful scoping/consultation process, but rather decided on its own the nature and scope of the Project to be foisted upon the City. As for the concern raised as to ease of travel by pedestrians, the EIA seems to have resolved the issue in words alone. It is shocking that the Consultant's solution to this major issue is the construction of four (4) pedestrian bridges along the 7-km route (see: pp. 18 and 22), i.e. a bridge every 1.75 km!

		"The difficulties and problems faced by pedestrians during movement on roads will be eliminated ; and "Public mental tension, frustration will be minimized A list of persons consulted is provided on p. 97. It includes only 23 persons, for a 7-km long Project, at an estimated cost of Rs.1.5 billion. The list comprises entirely of individuals, no groups, organisations, NGOs consulted has been provided. The Punjab EPA review proceedings refer to this as "random sampling at p. 23 of 87.	
3.	Generating Alternatives: "A rigorous approach to generating alternatives is more commonly associated with proposals from the public sector, where the allocation of public funds and priorities is recognised as a legitimate public interest...Alternatives are generated and examined to determine the best method of achieving project objectives, while minimising environmental impacts. They can be grouped under such headings as: * Activity alternatives (eg providing public transport rather than increasing road capacity) (EIA-G: para 2,6; p. 10)	Alternatives to the Project are discussed in para 2.3, pp. 16-17 of the EIA. The two alternatives discussed and rejected as follows: * No Project Option: In the absence of the Project, the existing traffic problem and the level of service will further aggravate with the passage of time. * Provision of Overhead Crossings: In addition to increased capital cost of construction, the "fibre of the area will be significantly	The consideration of the No Project Option indicates an extremely fatalistic and myopic approach to traffic management, as if the LDA (and TEPA) can exercise no control over future traffic flows apart from observing the increase in vehicular traffic, and providing further road space to accommodate it. Regretfully, the other options that are available to

"The 'no-build' alternative is often used as a base against which to measure the relative performance of other alternatives. In this case the relative impacts of the other alternatives are expressed as changes to the base case. If, overall, all the alternatives were judged to have unacceptable performance, the decision might be to adopt none of them, and stay with the status quo-- the no-build'. (EIA-G: para 2,6; p. 11) EIA-G: Para 5.2, p. 25 states that "for both the proposal and its alternative, the Environmental Report requires a description of the potential beneficial and adverse environmental impacts, both direct and indirect, for each component of the environment identified as important during the screening and coping stages. It goes on to state that "alternative proposals should be compared, focusing on the significant adverse and beneficial impacts, after allowing for mitigation measures. The preferred alternative should be identified with a complete description of those impacts considered to be of greatest significance and the measures proposed to avoid, reduce or mitigate them, and opportunities for environ-mental enhancement. A very instructive summary of the evaluation of disturbed. Less invasive alternatives which might not require large-scale construction have not been considered. No quantitative assessment of the alternatives over time has been provided. That fact that only 1.5 pages is devoted to alternatives speaks volumes of the seriousness with which other options were considered. It should be noted that the perspective of vulnerable road users has not been factored in when assessing alternatives, in contravention of, inter alia, the strategy for road development laid down in the Lahore Master Plan 2021 (para 21.1.1)

the LDA and other governmental organisations have not even been considered. These include: * Enforcement of traffic discipline * Relocation of critical activities * Implementation of affordable and convenient public transport systems * Parking discipline * Proper signals and traffic control * Elimination of jay-walking by catering to the needs of VRUs. Unfortunately it seems that the LDA wishes only to consider "mega projects" and not look for simple effective solutions. The consultant reveals the self-serving nature of the EIA when it states in para 1.4.1, p. 7, that "the main objective of the EIA study is to assess the environmental impacts likely to occur due to the construction of the roads improvement project, and to suggest mitigation measures to minimize the likely negative impacts . This

alternatives, indicating how each alternative satisfies the project objectives, is provided in the form of Figure 2, at p. 26. The objectives include 'least capital cost', 'least impact of physical environment', 'maximises community benefits, and 'long term return on investment'.

makes it crystal clear that Project alternatives were, in fact, not considered or evaluated. The consequential increase in traffic (especially private cars) will increase congestion, noise and air pollution. Thus signal-free express-ways and underpasses are 'band-aid solutions' which divert human, political and financial resources from the actual alternative solutions. The Lahore Master Plan in this regard states in para. 8.5, p.8-20: "Provision of additional road space over and above traffic requirements is a major source of traffic indiscipline and non-judicious way of utilizing network capacity having far reaching effects on traffic control and road discipline. And again in para 8.12.2, p. 8-29: "Provision of additional road space more than the requirements of the traffic does not contribute to the capacity

			rather it acts otherwise and is source of erroneous drive behaviour and bad safety situation in Lahore." Signal-free/high-speed roads cater to the minority who own cars, and ignore the requirements of the majority middle/low income stratas. The example of the signal-free corridor on Ferozepur Road has made it obvious that citizens find it dangerous to cross that road. Since the operation of that signal-free corridor has commenced, the TEPA has repeatedly had to re-design barriers and shoulders to route traffic in a safe manner, and has also been forced to install cat's-eyes even directly under overhead pedestrian bridges. For the existing Project, the proposed four (4) overhead pedestrian bridges for a 7-km route are insultingly inadequate.
4.	Site Selection: "While	As stated above, no	The Project

	technical and operational aspects often dominate the initial selection of a site for a proposal, proponents should give equal weight to the suitability of the site in terms of compatible land use and adequate buffer distancs. EIA-G: para 2.7, p. 11 Separation Distances: The following performance objectives are listed for Residential areas, hospitals or schools: "Protect residential amenity and health; odour, fumes, visual amenity, noise, dust, seepage (Table 1 on p.12)	description of adjoining land uses has been provided in the Project Description section of the EIA. The land uses adjoining the Project area consist of residential, ommercial, and institutional uses, with numerous health and education providers along the route. However, the suitability of the site, and buffer distances has not been discussed. Given no proper diagrams of the proposed construction have been given, one cannot even evaluate the buffer distances between adjoining uses and the Project.	proposes a signal free expressway carving its way through prime residential, commercial and institutional areas of the city centre. No exercise in "protecting residential amenity and health; and considering odour, fumes, visual amenity, noise, dust and seepage has been undertaken. It should be noted that a 1-km stretch of the Project is a declared silence zone, with a high concentration of hospitals, clinics and schools. They were not consulted as to the affects of the Project, given no scoping was carried out, and the well-being of patients and students does not seem to factor into the proponent's Project considerations.
5.	Assessing Impacts--Baseline Data Collection It is stated in the EIA-G: para 3.1, p. 12 that assessing impacts involves three tasks: (1) detailed work on impact identification, (2) detailed analysis of impacts to determine their nature,	Section 4 (p. 38) of the EIA deals with Baseline Data. It breaks the analysis up into Physical Resources (para 4.3, pp.39-63); Ecological Resources (para 4.4, p.63), Human	It is pertinent to note that the EIA-G state in para 3.4, p.15, that "It is not uncommon for a situation to arise where proponents seek immediate approval for a

magnitude, extent and effect, and (3) judgment of significance of impacts (whether they matter and whether mitigation required) Baseline data collection plays an essential part in this process. "The change caused by a particular impact can be evaluated by comparing the expected future state of environmental components if the proposal were not to go ahead, with the predicted state of those components if the project does proceed. Therefore, one of the first tasks involved in the detailed analysis of an impact is the collection of information that will help to describe the baseline situation at the expected time of implementation...Assumptions and extrapolations used to draw conclusions from the data should be justified. Where existing data is used, it adequacy and appropriateness for impact assessment of the proposal should be reviewed and discussed. --EIA-G: para.3.4, pp. 14-15.

and Economic Development (para 4.5, pp. 64-68), and Quality of Life (paras 4.6-4.7, pp. 68-73). Focus is drawn to portions of all of the above. Physical Resources: - Air Quality (para 4.3.8, pp. 53-63): It is stated that the main source of air pollution in the area is from traffic congestion, and increase in traffic load. 24-hr air quality testing carried out by SGS Consultants at Qartaba Chowk, Shadman Chowk, Fawara Chock, and Liberty Roundabout. Notable omission is PIC chowk, which is particularly sensitive to pollution on account of the numerous hospitals, clinics and schools located in the area. Noted that pollutants are within prescribed limits (NEQS) at all sites, with particulate matter reaching limits, and exceeding at one point (Qartaba Chowk). (Tables at pp. 55-57 and Annexure II, pp. 1-8 of SGS Report (annexed as Annexure 4.1 of EIA)). - Present and anticipated

project for which no baseline data has been collected. Clearly such a situation is untenable, and testifies to a lack of proper project planning . This is precisely what has happened here, except the LDA didn't even both for approval. Monitoring is limited to 4 days of the year, i.e. 23-27 January, 2015 (see: p. 1 of the SGS report). Grossly inadequate for a project of this scope. Physical Resources: Present and anticipated emissions: Detailed tables are provided at Annex 4.2 (pp. 75-78), however no sources have been quoted for the same (obviously drawn from some prior research). Violates the EIA-G, which state that adequacy and appropriateness of this data for impact assessment must be reviewed and discussed. EIA-G also states in para.5.1, p.24 that "The Environmental

emission from motor vehicles: Projections for emissions (without project) are presented in the form of tables and graphs on pp. 61-62. Details in the form of Annex 4.2 (pp.75-78) - Noise: States at para 4.3.9, p. 63, that "The project falls under a calm environment and presently, the noise level is within the permissible limits of 85dB. Tables of noise levels monitored at 4 sites by SGS at Annex III "pp. 1-4 of SGS Report). Ecological Resources: Flora: It is stated in para 4.4.2, p. 63 that 200 hundred trees and 100 plants exist within the Project right of way. Human and Economic Development It is incorrectly stated in para 4.5.5, p. 67, that the Project is part of the master plan of the city of Lahore. It states that the project is improvement, rehabilitation and augmentation of existing facilities, and as such land use rights are insignificantly affec-ted, with acquisition of 28 marlas. The Project is evidently	Report should make reference to all relevant studies and investigations that have been carried out in support of the proposal, or other studies, report or literature used in the Environmental Report. These supporting documents should be available to all stakeholders at the time of the Environmental report is publicly advertised. Most alarming is the fact that no estimate is given of increased traffic flow along the route. It obviously will increase. Instead the tables simply use the baseline vehicle numbers as a constant with or without the project, and estimates that there will be a net-decrease in emissions with the Project. More vehicles = more emissions. How much, the EIA doesn't bother to mention. Noise: The situation with noise pollution is even more alarming. The NEQS quoted are

an expansion and alteration of the existing site and facilities. Quality of Life: Socio-economic conditions Stated in para 4.6.1 (a), p. 68 that settlements in area include housing establishments of Shadman, GOR-1, Gulberg, and institutions such as Lahore College for Women, Kinnaird College, PIC, Services Hospital, and other commercial and business centers. States that there is no significant commercial activity directly on the route except small ones near Services Hospital. Completely neglects to mention various high-rises and plazas, and most blatantly, Main Market, Gulberg. Quality of Life: Socioeconomic Environment States in para 4.7.3, p. 73 that various mosques fall within the project site, but fails to mention the Christian cemetery on Jail Road as a cultural and religious resource. Specifically states at para 4.7.9, p. 73 that no graveyard is located near the proposed Project! States in para 4.7.8 outdated. The latest were issued by the Fed Govt. In 2010, vide S.R.O. No. 1062(I)/2010. The consultant is oblivious of this fact. The present standards are: 55 - 65 dB for commercial areas, 45--55 dB for residential areas, and for "silence zones" the maximum is 50dB (PIC Chowk being a declared silence zone). The existing noise conditions recorded at all times exceed these limits (see: Annex III, pp. 1-4 of SGS Report). EPA has a duty under S.11 of PEPA to prohibit the Project on this count, and immediately address the existing noise levels. Ecological Resources: EIA fails to mention the size and age of the trees, with several of them decades-old. Ironically, it is stated in para 4.3.8, p. 55 that the presence of plantation and green areas at junctions maintain air quality thereat. Human and

that no "Project Affected Persons" found in the project area. In order to take care of pedestrian traffic, overhead bridges have been proposed.	Economic Development The Project finds no mention in the Lahore Master Plan, 2021 (argument developed later). No mention of which property is to be acquired, and when. Should occupants of these properties expect to be informed by the knock of bulldozers? Quality of Life: Socio-economic conditions Mentions these prime housing and commercial sites, but does not state any affect on them. Certainly an expressway, with large volumes of fast-moving traffic, without signals for the flow of traffic across the route, and inadequate provision for pedestrians, will have severe impacts on both residential and commercial uses of the adjoining properties. What of safety concerns for colleges such as Kinnaird College, which will in all probability be deprived of the service lane buffer

			to check vehicles, and health concerns for patients in the various hospitals and clinics which will now adjoin an expressway? Quality of Life: Socioeconomic Environment The EIA fails to even notice the presence of the historic Christian cemetery at the site. Has adequate provision been made for access to this religious, cultural and historic site? Have the concerns of its custodians been taken into consideration?
6.	Health Impacts: The EIA-G contains a specific section dealing with health impacts (para 3.8, pp. 17-18). It is stated herein that "Development project can also result in adverse effects on community health and safety. Directly from changes to biophysical environment (exposure to pollution) or indirectly as the result of other changes caused. Implementation of proposals can also increase risk of accidents and disasters. Major health impacts of projects listed in EIA-G: Table 3 on p. 18: Under Transport: 1. States 1994 study: that 88% of traffic	The EIA does not address the possible health and safety impacts of the Project, though they are numerous.	The Proponent and Consultant seem oblivious to the considerable health and safety risks of having a multi-lane, dual-carriage expressway plying its way through prime residential, commercial and institutional areas of the city centre. Signal-free corridors pose considerable risks for vulnerable road users, which in Pakistan, make up the majority of road users. In this regard, reference may be

	police constables in Karachi develop respiratory problems within 2 years of commencing duty, 84% had mild to moderate pain while taking a deep breath, 37% experienced heart palpitation. 2. Traffic accidents estimated to cost 1% of GNP in Papua New Guinea in the 1980s. Common sequence of activities to evaluate health effects of a transportation study stated at EIA-G: para 8.5; p. 43		made to the excellent article by an urban development resear-cher named Rabia Ezdi, published in The News on Sunday, on 7 September 2014, titled "Truths and lies about signal-free corridors . It is annexed to the Petition (W.P. No. 5323/15) at pp. 54-56.
7.	Impact Significance: Once impacts analysed, important to determine their significance, i.e., whether acceptable, require mitigation, or are unacceptable to the community. EIA-G: para 3.10; pp. 19-20 "The approach used to determine significance must take into account the cultural and social aspects of local value systems and traditional practices. Key bases for assessing impact significance are: * Level of public concern (particularly over health and safety) * Disturbance and disruption of valued ecological systems; and * Degree of negative impact on social values and quality of life EIA-G: para 3.10, p. 20	Dealt with in a cursory manner (without participation as mentioned above) in Section 5 (p. 79) of the EIA (to be read with Sec-tion 7--Environmental Impacts and Mitigation Measures p. 98). Operation phase impacts are mentioned in para 5.2.2, pp. 83-84, and Table 5.5 on p. 90. It is admitted in para 5.2.2 that the operation of the Project may result in "safety hazards, public health and nuisance and it is stated that sound environmental management practices implemented by the project sponsor will effectively handle "Noise and other public nuisance abatement Table 5.2	Section 5 of the EIA embodies the subjective opinion of the Consultant and the Proponent on the significance of impacts, whereas the guidelines stress whether impacts are acceptable or unacceptable to the community. It goes without saying that "cultural and social aspects of local value systems have not been considered. Neither has the level of public concern (particularly over health and safety), disturbance and disruption of values ecological systems, and degree of negative impact on social

		on p. 84 admits that increased vehicular traffic will cause a negative impact to air quality, noise and vibration, public health and nuisance during the operation phase of the Project (unmitigated). Surprisingly, air quality deterioration and increased noise levels do not find mention in Table 5.5, p. 90, which deals with impact characterization in the operation phase. This is a glaring omission, given the admission contained in Table 5.2. Table 5.5 states that the Project operation will have a high impact on surface water contamination, ground water contamination, and a medium impact on public health, and nuisance issues.	value and quality of life been addressed. It is obvious from the comments at the public hearing, the written objections filed, and the multiple petitions before this Honourable Court that a large segment of the community, including residents of Gulberg, have serious concerns on all the above.
8.	Mitigation Measures: "One of the main tasks of impact assessment is to predict and prevent unacceptable adverse effects through the implementation of appropriate project modify-cations - also known as mitigation measures. The purpose of mitigation in the environmental assessment process is to: * Look for better ways of doing things so that the	1- Summary of environmental impacts stated in Table 7.2, pp. 99-100, states the Project will have a positive impact on air quality, and an insignificant impact on noise levels, and health and safety of the public during the operation phase. 2- Stated in Table 7.2 under the 'Disturbance of	1-This is obviously not the case given the considerable increase in traffic volumes along the Project route once operationalised. This increase in traffic volumes is not accounted for throughout the EIA, even though it is at points admitted that the Project will have a

negative impacts of the proposal are eliminated or minimised, and the benefits are enhanced; and * Make sure that the public or individuals do not bear costs which are greater than the benefits which accrue to them -- EIA-G: para 4.1, p. 21	People' head that the Project shall have a positive impact. 3- Stated in paragraph 7.3.1.1, p. 100, that 28 marlas of land will be acquired for the Project, but it is not stated where this land is and in whose possession. Similarly, no details are given for the 15,500 sq. ft. of structures which will have to be dismantled for the Project 4- Stated in paragraph 7.3.1.11, p. 104 that "considerable increase in number of vehicles is anticipated on the upgraded project. The figures for present and projected daily traffic and emissions presented in Tables 7.3 and 7.4 (p. 105), and Exhibit 7.1 (p. 106) are not backed up by sources, and also directly conflict with the figures quoted in the tables in Annexure 4.2 (pages 75 -- 78) of the EIA. 5- With respect to noise levels, the EIA states in paragraph 7.3.1.12 that "noise generated... by vehicular traffic during operation stage is likely to affect the project area particularly the sensitive receptors	negative impact on air quality. 2- This obviously depends on how the Consultant and the LDA chooses to define "People . If they are referring to the minority of persons who drive privately-owned vehicles then this may be correct, but it certainly isn't so for the majority of people who use non-motorized modes of transport, such as pedestrians and cyclists, who do not factor into the plans of the LDA 3- Dealt with in column to the left. 4- Dealt with in column to the left. 5- Dealt with in column to the left 6- If this is in fact the case, the LDA should be called upon to prove whether such lanes have been included in its project design drawings and maps. As far as the undersigned can make out from the barely legible design drawings included in the EIA, no such lanes have been provided for. Roadside footpaths are deemed adequate

like schools, hospitals etc. However, it shockingly proceeds by stating that "no sensitive receptor has been observed within the project area. This directly contradicts its own finding in paragraph 4.6.1 of Section 4 (page 68) that settlements around the vicinity of the Project include Lahore College for Women University, Kinnaird College, Services Hospital, Punjab Institute of Cardiology. To this list may be added APWA College, Umer Hospital, and various other hospitals and clinics situated in the vicinity of PIC Chowk. These institutions neither factored in the Consultant's idea of stakeholders, nor are they counted as "sensitive receptors even though they fall squarely within the definition provided by the Consultant itself. 6- for the safety of pedestrians and cyclists, the Consultant makes the ambitious claim in paragraph 7.5.3 that "separate lane shall be allocated for the cyclists . Such a claim is also for pedestrians, whereas the signal-free corridor, by definition, will restrict the ability of pedestrians to cross the 7-km road without serious risk of injury. The LDA and the Consultant consider four (4) pedestrian bridges adequate to address the needs of pedestrians. In the Environmental Mitigation Plan at Annexure 7.3 (p. 136), the Consultant seeks to mitigate the safety issues on account of increased traffic volume, by imposing speed limits of 30 km/h for LTVs along the Project route. It goes without saying that such a suggestion does not even merit comment. - The mitigation measures for the Operation Phase is mentioned in para 7.5 (pp. 116-117) and stipulates no meaningful commitments by the proponent to mitigate adverse impacts. There is reason to believe

		made in Table 8.3 "Environmental Management Plan" (Operation Stage)	that some mitigation measures have been mentioned but not factored into the actual Project at all (dedicated lane for cyclists).
9.	Environmental Management Plan (EMP): An EMP is a document designed to ensure that the commitments in the EIA, subsequent review reports, and Environmental Approval conditions are fully implemented. EIA-G: para 4.3, p. 22	The Consultant has supposedly framed "Monitoring Frame-work Guidelines" for the Project, except that the guidelines provided (in Table 8.1; pages 138-139) actually relate to a farm hatchery project, and not the Signal Free Corridor. The said guidelines contain references to the spillage of feed, organic waste, manure from sheds, storing of medicines, and visits to the hatchery by medical doctors. As per para 8.1, p. 137, it seems these guidelines are meant to ensure the management and monitoring of the environment during construction and operation of the Project. Noise: Particular reference is made to the management and monitoring of noise levels during operation stage, as stated in paragraph 8.3.2 (b), pp. 144-145. It is stated herein that "Noise levels will be	Noise: Given the fact, as stated above, that the noise level readings across the entire Project route already exceed the current NEQS, and will further exceed them on account of increased vehicular speeds, construction of further civil structures and underpasses, removal of service lanes and buffers, and uprooting of several large trees, the requisite mitigation measures should already be mentioned in the EIA. However, the Consultant has failed to provide for adequate mitigation measures to be incorporated in the Project design. As mentioned above, this alone is a reason to reject the EIA and the Project. In the past, mitigation

monitored to see whether they are within NEQ standard limits. When they are found to exceed NEQ limits and disturb nearby settlements, noise abatement measures, like plantation of trees, installation of noise dampening and absorbing media and construction of wall barriers will be taken.	measures have not been implemented, despite judicial directions to this effect. Reference is made to the canal widening case (2011 SCMR 1743) whereby underpasses and junctions were to be corrected, and traffic management implemented. Similarly, in the air quality case (2007 CLD 533) mitigation measures to check air pollution were laid down, but have not been implemented.

9. Learned Advocate General, Punjab while defending the Project on the environmental score submitted that the EPA review process should not be minutely examined and the EIA approval granted to LDA should not suffer at the altar of mere technicalities in the review process. He urged that the overall object and the underlying public benefit of the Project must be considered, while minor procedural lapses in the EIA review process be disregarded. On the structure of EPA, as a regulator, he submitted that the DG was in fact the EPA and was appointed by the Government under Environmental Protection Department Service Rules, 1997 framed under section 23 of the Punjab Civil Servants Act, 1974. On EPA being an Attached Department of the Provincial Government under the Rules of Business and, therefore, under the control of the Provincial Government, the Advocate General, Punjab did not make any notable submission. On the constitutional scope of the Local Government System, he submitted that the Provincial Government is not denuded of its powers even if the political, administrative and financial responsibility and authority have been devolved to the local governments. He further explained that the powers devolved are not absolute and do not in any manner control the executive authority of the Provincial Government and placed reliance on section 4 of the PLGA. He submitted that LDA is an Authority of the Provincial Government and the recent amendments brought about in Lahore Development Authority Act, 1975 ("LDA Act) through Lahore Development Authority (Amendment) Act (XXVI) of 2013 are

subsequent to PLGA, therefore, the final mandate of the Provincial Legislature is reflected in the amended LDA Act which will override the provisions of PLGA.

10. Learned counsel for respondent LDA raised the following preliminary objections;

(a) That the instant petition is not maintainable as alternate remedy is available to the petitioners to challenge the EIA approval granted by EPA. He submitted that the Environmental Tribunal was available to the petitioners. He submitted that the petitioners had a dual statutory remedy under PEPA, the right of appeal before the Environmental Tribunal and second appeal before the Division Bench of this Court. From this he concluded that by approaching this Court directly under Article 199, the remedial scheme under PEPA stands bypassed by the petitioners, who have failed to exhaust the adequate remedy available under the law. He placed reliance on Khalid Mehmood v. Collector of Customs, Customs House, Lahore (1999 SCMR 1881) and Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others (2011 SCMR 1813).

(b) That even if the impugned order is void, this Court should refrain from interfering, if such interference promotes injustice. He tried to impress upon the Court that the Project was hugely beneficial for the residents of Lahore. He without any technical evidence, generalized that the Project addresses and alleviates the gnawing issue of traffic congestion in the city. He added that the Project will bring huge savings for the public in terms of fuel and travel time. The Project, according to him, would enhance accessibility to the medical and educational institutions. On the basis of these submissions he pleaded that interference by this Court would be unjust. He placed reliance on Rana Muhammad Arshad v. Additional Commissioner (Revenue), Multan Division and others (1998 SCMR 1462), Nawab Syed Raunaq Ali etc. v. Chief Settlement Commissioner and others (PLD 1973 SC 236), S. Sharif Ahmad Hashmi v. Chairman, Screening Committee, Lahore and another (1978 SCMR 367), Muhammad Baran and others v. Member (Settlement and Rehabilitation), Board of Revenue, Punjab and others (PLD 1991 SC 691) and Province of the Punjab through Secretary, Health Department v. Dr. S. Muhammad Zafar Bukhari (PLD 1997 SC 351).

(c) He submitted that the Project is a policy matter and the Court should not interfere in such matters. Reliance is placed on Suo Motu Case titled Cutting of Trees for Canal Widening Project, Lahore (2011 SCMR 1743), Watan Party and another v. Federation of Pakistan and others (PLD 2013 SC 167) and Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (2012 SCMR 455).

(d) The learned counsel, in a somewhat sheepish whisper, submitted that, one of us (the author judge), had represented one of the petitioners in a public interest environmental litigation, several years

ago, before being elevated to the bench, suggesting that he may consider recusing himself from hearing the case.

11. On merits he submitted that deficiencies in the EIA submitted by the consultant can be easily plugged by examining and evaluating PC-1 prepared by respondent LDA and submitted along with EIA before the EPA. He repeated the argument of the learned Advocate General, Punjab that mere technical lapses by the EPA during the EIA review process are inconsequential and the overall public benefit of the Project must be seen. He further submits that in the light of Article 140A of the Constitution, the power of the Provincial Government cannot be diluted and the subsequent amendment brought about in LDA Act, 1975 will override the provisions of the Punjab Local Government Act, 2013.

12. Learned counsel for the contractor of the Project submitted that EIA was not required in the instant Project as it entailed maintenance, rebuilding and reconstruction of exiting roads and placed reliance on the said exception under clause D, relating to Transport, in the 2nd Schedule to the Regulations. He quoted several international experiences including one from Karachi justifying that a signal free corridor is in the public interest. He also submitted that as far as EIA is concerned, LDA has substantially complied with review process and therefore minor lapses should be ignored. He placed reliance on Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (2012 SCMR 455), Collector of Sales Tax and Central Excise, Lahore v. Zamindara Paper and Board Mills and others (2008 SCMR 615), A.M. Construction Company (Pvt.) Limited through Chief Executive Officer and another v. The National Highway Authority through Chairman and 2 others (2015 CLD 130).

13. Some of the traders and residents of the area, represented through their counsel, while adopting the arguments of the learned counsel for LDA, supported the Project.

14. Professor Osama Siddique, the learned amicus curiae submitted that the Current Model of Urban Development in Punjab is disparate, inequitable and discriminatory -- LDA is its manifestation and Local Governments are the solution for addressing such issues: The current model and the signal free corridor project discriminates against those who don't own cars, those who don't live in posh areas, those who don't live in Lahore at all and completely overlooks the needs of pedestrians, cyclists and those not owning private transport, the possibility of car pools, greater investment in public transport, and the growing international practices of taxing use of motor vehicles in congested areas as well as pollution (this project is actually encouraging them) as well as improving the environment for all (and especially for the poor and disadvantaged) and boosting public goods like ambient air quality. The project epitomizes a lop-sided and highly discriminatory view of development as it uses a major portion of the funds for the entire division for certain roads that only benefit certain already posh areas with good roads and the

elite that owns fast vehicles while continuing to neglect the vast majority of less developed areas of the metropolis and the Division -- there is no parity in areas and district-wise allocation of development resources and focus. The project is unclear in terms of its benefits for traffic congestion and also unfit as fast signal free roads are inappropriate for areas where people have legitimate needs to stop for commerce, medical aid and multiple additional legitimate reasons. It actually raises traffic volume rather than regulating it as number of individual polluting vehicles will go up rather than improving amenities and facilities for the vast majority of people who don't own cars by neglecting public transport and footpaths.

15. Mr. Waqqas Mir, Advocate and learned amicus curiae, submitted that the Constitution moved the promise of local government from Principles of Policy to a substantive part of the Constitution. When Article 140A was being included, the framers had a choice to include a time period but they chose not to. Even with Article 175(3), over time the august Supreme Court of Pakistan and the High Courts have struck down laws that are violative of Article 175(3). Reliance is placed on Imran v. Presiding Officer, Punjab Special Court No.VI, Multan and 2 others (PLD 1996 Lahore 542), Messrs Chenab Cement Product (Pvt.) Ltd. and others v. Banking Tribunal, Lahore and others (PLD 1996 Lahore 672), Sh. Riaz-ul-Haq and another v. Federation of Pakistan through Ministry of Law and others (PLD 2013 SC 501), Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445). Furthermore, the august Supreme Court of Pakistan has itself emphasized the importance of the system of local government in ensuring good governance and protection of Fundamental Rights in Raja Rab Nawaz v. Federation of Pakistan through Secretary, Defence and others (2013 SCMR 1629).

16. The submissions made by Professor Roger Myerson, Glen A. Lloyd Distinguished Service Professor of Economics at the University of Chicago and the Recipient of the 2007 Nobel Memorial Prize in Economics Sciences and Dr. Ali Cheema, Associate Professor of Economics Lahore University of Management Sciences (LUMS) and Senior Research Fellow in Political Economy Institute of Development and Economic Alternatives (IDEAS) are considered and discussed in the judgment below.

OPINION OF THE COURT

Preliminary objections raised by LDA

17. The summary of the preliminary objections, mentioned in detail above, is that the petitioners have an alternate remedy; the Project being in public welfare, any interference by the Court would amount to injustice; setting up of the Project is primarily a policy matter and should best be left to the executive; and in the end a fainthearted verbal submission that one of us should recuse from the bench due to conflict of interest.

18. The contours of this case go beyond the mere legality of the EIA approval granted by DG, EPA. This case raises far-reaching constitutional questions that go to the root of how we intend to define democracy and federalism under our Constitution. It brings up for examination the extent of autonomy and independence to be enjoyed by the apex provincial environmental regulator i.e., EPA and the connected constitutionalism of environmental justice. It has been agitated that the present EPA unashamedly suffers from naked regulatory capture at the hands of the Provincial Government. It is vehemently argued that EIA review process is not only deficient but lacks the physical regulatory architecture mandated under the environmental laws, hence the entire review process is void ab inito. It is also contended that the review process is hostage to the whims of one man -- the DG, EPA. The petitioners have also challenged the constitutional and legal competence of LDA to propose the Project. It has been argued that LDA does not enjoy the jurisdiction or competence to trump or usurp the municipal functions entrusted to the local government under the Constitution and the PLGA. It is submitted that the scope of the Project squarely falls under the responsibility and authority devolved on the local government under PLGA. Under Article 140A, the devolution of political, administrative and financial responsibility and authority vests in an autonomous local self-government system which cannot be transgressed or brushed aside by a provincially controlled and administered LDA because the powers of the provincial legislature are subject to Article 140A. This Court is required to interpret the contours of democracy and cooperative federalism in the country, in the wake of 18th Constitutional amendment.

19. These are deep and complex constitutional questions and undoubtedly fall outside the limited statutory jurisdiction of an Environmental Tribunal, which is empowered to simply review the EIA approval within the legislative four walls of PEPA. It is not expected of the learned Tribunal to address questions regarding the regulatory capture of EPA and its legal consequence, the incompetence of LDA to propose and initiate the Project under Article 140A of the Constitution read with PLGA and the encircling debate of democracy and federalism that emerges from these questions.

20. We wish to underline that, in this case, we are not examining the merits or demerits of the Project or questioning the justification and rationality for having such a Project. These issues do not concern us because there are other graver issues that need to be addressed. We are simply concerned with the constitutionality and legality of the environmental process adopted to review the EIA filed by LDA. We are also concerned with the legal character of the regulator (EPA) and the constitutional role of LDA, the proponent of the Project, in the light of Article 140A of the Constitution. We are, therefore, not examining the policy dimension of the Project or the technical viability of the Project, therefore, we are neither assuming the role of EPA or stepping into the shoes of the consultant who has

prepared the EIA or the concerned members of the civil society who, inter alia, oppose the Project on the ground of misplaced, inappropriate and irrational allocation of public funds. For the above reasons, the preliminary objections are hopelessly misconceived and unfounded and are, therefore, overruled.

21. The faint-hearted submission of the learned counsel, that one of us should recuse from the bench because long years ago one of us (the author judge) represented one of the 29 public spirited petitioners in some public interest environmental litigation case was considered to be unflattering, in the light of the corpus of our jurisprudence on the subject, which seem to have escaped the attention of the learned counsel. Reliance is placed on Ms. Benazir Bhutto v. The President of Pakistan and another (1992 SCMR 140), Malik Asad Ali and others v. Federation of Pakistan through Secretary, Law, Justice and Parliament Affairs, Islamabad and others (PLD 1998 SC 161), Syed Akhlaque Hussain v. Pakistan (PLD 1969 SC 201) and M. H. Khondkar v. The State (PLD 1966 SC 140).

22. Further, the fact that these cases have been heard and decided by a full bench of this Court, comprising three Hon'ble Judges, who have unanimously passed this judgment, cannot be lost sight of. These petitions are in the nature of public interest litigation, which are inquisitorial, rather than adversarial proceedings. These cases are, therefore, not about personal interests and benefits but about public interest and welfare. We found the submission of the learned counsel to be hopelessly flippant and we shrugged it aside with the grace befitting our office. Advocate General, Punjab or any other counsel for the respondents did not raise this objection. Even the learned counsel for LDA did not raise it again or agitate it through a written application, hence, the objection stood waived at the very beginning of the case. This is so because the case continued for several days thereafter and was argued by the learned counsel for LDA without a whimper of demur. We are recording this for completion of record.

On merits

23. This case has two important yet integrated constitutional dimensions. One pertains to the integrality of environmental justice to fundamental rights and the other about powers and autonomy of the elected local government and the diminishing role of LDA.

Environmental Justice

24. E.O.Wilson, in his famous book, The Creation writes: "If there is any moral precept shared by people of all beliefs, it is that we owe ourselves and future generations a beautiful, rich and healthful environment.[2] Environment includes air, water, land, all layers of atmosphere, all organic and inorganic matter and living organisms, the ecosystems and ecological relationships, buildings, structures, roads, facilities and works, all social and economic conditions affecting community life.[3] Environment (natural and built) is the

overarching habitat and is intrinsic to our survival and integral to our quality of life. Protection of the environment is, therefore, an inalienable right and perhaps more fundamental than the other rights. It emerges from the right to life, liberty and dignity under Articles 9 and 14 of the Constitution. Principles of the Stockholm Declaration, 1972 state that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.[4] The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.[5] Economic and social development is essential for ensuring a favorable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.[6]

25. The corpus of environmental laws have a singular purpose of protecting life and nature including the International Environmental Principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Our existing jurisprudence (led by the landmark judgment of Shehla Zia case[7]) rests environmental justice on right to life (Article 9) to mean a right to a healthier and cleaner environment. Time has come to move on. To us environmental justice is an amalgam of the constitutional principles of democracy, equality, social, economic and political justice guaranteed under our Objectives Resolution, the fundamental right to life, liberty and human dignity (Article 14) which include the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Environment and its protection has come to take center stage in the scheme of constitutional rights. Right to environment that is not harmful to the health or well-being of the people and an environment that protects the present and future generations is an essential part of political and social justice and even more integral to the right to life and dignity under our Constitution. With this reminder and background, we venture to examine the structure of EPA and the EIA review process adopted by EPA in evaluating the EIA of the Project filed by LDA.

EPA and Regulatory Capture

26. The first question that requires determination is the constitutionality and legal character of the Regulator i.e., EPA under PEPA. Environmental Protection Agency (EPA) is an independent statutory regulator established under section 5 of the Act for the "protection, conservation, rehabilitation and improvement of the environment, for the preservation and control of pollution and promotion of sustainable development.[8] Section 5 states as under:-

5. Establishment of the Provincial Environmental Protection Agency.-- (1) The Government shall, by notification in the official Gazette, establish the Provincial Environmental Protection Agency to exercise the powers and perform the functions assigned to it under this Act, the rules and the regulations.

(2) The Provincial Agency shall be headed by a Director General, who shall be appointed by the Government on such terms and conditions as it may determine.

(3) The Provincial Agency shall have such administrative, technical and legal staff as the Government may specify, to be appointed in accordance with such procedure as may be prescribed.

(4) The powers and functions of the Provincial Agency shall be exercised and performed by the Director-General.

(5) The Director-General may, by general or special order, delegate any of these powers and functions to staff appointed under sub-section (3).

(6) For assisting the Provincial Agency in the discharge of its functions, the Government shall establish Advisory Committees for various sectors, and appoint as members thereof eminent representatives of the relevant sector, educational institutions, research institutes and non-governmental organizations.

27. When the subject of Environment devolved to the provinces by virtue of 18th Constitutional Amendment, the federal law i.e., Pakistan Environmental Protection Act, 1997 was adapted, with amendments, for the Province of the Punjab by the Punjab Environmental Protection (Amendment) Act 2012 (XXXV of 2012) w.e.f 18-4-2012. Section 8 of the erstwhile Pakistan Environmental Protection Act, 1997 empowered the Provincial Government to establish through notification a Provincial Environmental Protection Agency, which was to exercise such powers and perform such functions as may be delegated by the Provincial Government. Section 8 is reproduced for ready reference:-

"8. Establishment, powers and functions of the Provincial Environmental Protection Agencies.--- (1) Every Provincial Government shall, by notification in the official Gazette, establish an Environmental Protection Agency, to exercise such powers and perform such functions as may be delegated to it by the Provincial Government under subsection (2) of section 26.

(2) The Provincial Agency shall be headed by a Director-General who shall be appointed by the Provincial Government on such terms and conditions as it may determine.

(3) The Provincial Agency shall have such administrative, technical and legal staff as the Provincial Government may specify, to be appointed in accordance with such procedure as may be prescribed.

(4) The powers and functions of the Provincial Agency shall be exercised and performed by the Director-General.

(5) The Director General may, by general or special order, delegate any of the powers and functions to staff appointed under sub-section (3).

(6) For assistance of the Provincial Agency in the discharge of its functions, the Provincial Government shall establish Sectoral Advisory Committees for various sectors and appoint members from amongst eminent representatives of the relevant sector, educational institutions, research institutes and non-governmental organizations. (emphasis supplied)

28. Historically, under Pakistan Environmental Protection Ordinance, 1983 a provision was made for the establishment of Provincial Environmental Protection Agency. In 1987, Environmental Protection Agency (EPA), Punjab was formed. The staff of the existing Directorate of EPCO was transferred to EPA, Punjab under the administrative control of the HP&EP Department. In 1996, a separate administrative unit, by the name of Environment Protection Department (EPD) was formed under the Government of the Punjab. EPA Punjab was then detached from the HP&EP Department and now works as functional unit under the EPD, Punjab.[9] Subsequently, in 1997, Provincial EPA was established through a notification under section 8(1) (above) and housed as a sub-agency within the Environmental Protection Department of the Government of the Punjab. It would only exercise power delegated to it by the Provincial Government. EPA, therefore, appears in the Rules of Business of the Government of the Punjab as an Attached Department. The promulgation of Punjab Environment Protection Act, 1997 w.e.f. 18-4-2012 transmutes and emboldens the erstwhile notified environmental protection agency into an autonomous statutory regulator. It is noted with regret that this structural change has gone unnoticed by the Government of the Punjab. In reality, EPA is still operating in the past, as a delegatee of the Provincial Government.

29. Section 5 of PEPA states that EPA shall be headed by the Director General, implying that there are other members that constitute the Agency, but in fact, EPA is actually one person i.e., the Director General (DG).[10] All the powers and functions of the EPA are to be performed by DG under section 5(4) of the Act. EPA can have its own administrative, technical and legal staff appointed by the DG. The DG enjoys the power to delegate any of its powers to the staff so appointed. EPA has a proactive role under the law to administer and implement the provisions of PEPA, the Regulations and Guidelines made thereunder. According to the preamble, PEPA is to provide for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development. Under section 7, EPA can own, lease, purchase, hold and acquire moveable and immoveable property, enter into contracts, execute instruments, fix

and realize fees, rates and charges. EPA is a body corporate and architecturally an independent provincial environmental regulator. EPA under the law acts as a trustee and a watchdog with the responsibility of protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development on behalf of the people of this Province. EPA acts as a guardian of the people and the Nature, in protecting the environment of the community. It has the onerous responsibility to safeguard the constitutional value of social justice which includes environmental principles of sustainable development, precautionary principle, inter and intra-generational equity and public trust doctrine and the fundamental rights to life and dignity. To achieve this objective EPA needs to be fiercely independent and autonomous in reality.

30. The Act provides that the Provincial Government shall appoint the DG. The mode of appointment or the qualifications of the DG are not provided under the Act or the Regulations. In the absence of any statutory framework, it is trite law that any public post has to be filled through public advertisement to ensure transparency and merit. Reliance is placed on Ghulam Rasool v. Government of Pakistan through Secretary, Establishment Division Islamabad and others (PLD 2015 SC 6), Asaf Fasihuddin Khan Vardag v. Government of Pakistan and others (2014 SCMR 676), Khawaja Muhammad Asif v. Federation of Pakistan and others (2013 SCMR 1205), Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132) and Dr. Naveeda Tufail and 72 others v. Government of Punjab and others (2003 SCMR 291). It is also axiomatic that the post of the DG has to be filled through initial recruitment as it is not a cadre post. DG actually embodies EPA. Hence, professional qualifications, relevant experience, open and transparent recruitment process, is necessary, in selecting and appointing the DG. As a reference, the qualification of DG appointed through initial recruitment under the Environment Protection Department Service Rules, 1997, when the Provincial Environmental Protection Agency was a notified agency of the Provincial Government was as follows:

Ph.D. in Environmental Sciences/Environmental Engineering from a recognized University with ten years experience in Projects relating to environmental issues along with two publications in HEC recognized research Journal.

This was the qualification of the DG when EPA was under the Provincial Government. Sadly, the current DG is a serving civil servant appointed through promotion as a DG. He has an LLB degree to his credit besides some unrelated experience in various departments of the Provincial Government. He is serving as a DG since 13-11-2012 but does not have technical/professional environmental qualifications or requisite experience. He has not been appointed through an open and transparent advertisement process but has been promoted under Environment Protection Department Service Rules, 1997 (Rules framed under section 23 of

the Punjab Civil Servants Act, 1974) perhaps harbouring under a mistake that EPA is still a sub-agency of the Provincial Environment Protection Department. The said Rules also describe EPA as a functional unit of EPD. The post of DG (grade 20) under the said Rules is to be filled through initial recruitment or through promotion.

31. As pointed out above, the post of DG is not a cadre post and cannot be filled through promotion, besides a person who is already an employee of the Provincial Government cannot be appointed to head a statutory regulator, which under the law is to grant approval of projects proposed by the Provincial Government. The organograms of EPA and EPD, submitted by the DG, are structurally different on paper but operationally EPA and EPD act as one and are interchangeably referred to as EPA/EPD.

32. Rule 21 of the Rules of Business provides that the heads of the Attached Department i.e., the DG in this case, shall submit cases for approval of the government through self-contained reference giving information and details necessary for an appropriate decision. Second Schedule to the Rules of Business deals with Distribution of Business among Departments. Item 2 under the head Environment Protection Department states: "Administration of Environmental Protection Agency, Punjab.

33. It is important to underline that EPA as an environmental regulator has to regulate public, as well as, the private sector. Neutrality, autonomy and independence are foundational to the existence of any robust, dynamic and proactive EPA and are mandatory to actualize its avowed objectives under the law. Any regulator, which is controlled and dictated by the parties it regulates (in this case the Provincial Government), is in fact under regulatory capture and its decisions and approvals have no credence, legal value or moral authority and amounts to fraud on the rights of the people and a mockery of environmental justice. "Regulatory capture is a theory associated with George Stigler, a Nobel laureate economist. It is the process by which regulatory agencies eventually come to be dominated by the very industries they were charged with regulating. The term regulatory capture refers to the subversion of regulatory agencies by the firms they regulate. Capture implies conflict, and regulatory capture implies that the regulated firms have, as it were, made war on the regulatory agency and won the war, turning the agency into their vassal. [11] "Regulatory capture happens when a regulatory agency, formed to act in the public's interest, eventually acts in ways that benefit the industry it is supposed to be regulating, rather than the public. Public interest agencies that come to be controlled by the industry they were charged with regulating are known as captured agencies. Regulatory capture is an example of gamekeeper turns poacher; in other words, the interests the agency set out to protect are ignored in favour of the regulated industry's interests. [12] "We can simply define 'regulatory capture' as the capture of "regulators" by the regulated.[13]

34. EPA in its present form is a government agency rather than an independent environmental regulator. The EIA approval of Rs 1.5 billion project proposed by LDA, an Authority headed by the Chief Minister and controlled by other members of the Provincial Government cannot possibly be refused by the DG, who is himself a grade 20 employee of the same government, which also controls his appointment and transfer. In this background, EPA cannot perform its assigned role under PEPA, hence, the entire exercise of EIA approval is a sham unless and until, the post of DG is filled through an open and transparent recruitment process keeping in view the required qualifications for the post. The impugned approval of DG, EPA dated 19-3-2015 is a result of dictation and non-application of mind and hence bad in law.

Scope and meaning of EIA

35. One of the more important functions of EPA is to review and approve the Environmental Impact Assessment of any new project. It was the continuing environmental degradation in the developed countries that prompted the United Nations to hold its first Conference on the Human Environment, in Stockholm in 1972, to discuss sustainability at the global scale. Our Common Future (or the Brundtland Report) fashioned the most commonly used definition of Sustainable Development: "Development that meets the needs of current generations without compromising the ability of future generations to meet their own needs . The Brundtland Report provided the basis for the landmark Rio Summit in 1992 which laid the foundations for the global institutionalization of sustainable development, to which Pakistan is also a party. EIA was internationally introduced, for the first time, as a sustainable development tool through the Rio Declaration.

"Principle 17: Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

EIA as a tool was created to be used at the planning stage in line with the precautionary principle -- a principle initiated by the Rio Declaration for better and sustainable development.

"Principle 15: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

Until recently, EIA was not readily understood and accepted as a tool in developing countries. Developers resisted and argued that it was anti-development because laws and policies supporting it dictated that developments causing negative impacts should be discontinued. In a nutshell, EIA was considered just another

bureaucratic stumbling block in the path of development. Secondly, it was conceived as a sinister means by which industrialized nations intended to keep developing countries from breaking the vicious cycle of poverty. Thirdly, the experts in the developing countries were foreigners who were viewed as agents of colonization. The need for EIAs has become increasingly important and is now a statutory requirement in many developing countries. Historically, the choice of new projects was primarily based on one criterion: economic viability. Today, the second and a third criteria of environmental and social impact, have become a strong yardstick, hence the triple bottom-line approach (economic, environmental and social) to project viability (Modak and Biswas, 1999). [14] The Department of Environment, UK (1989) defined EIA in a comprehensive manner as "a technique and a process by which information about environmetal effects of a project is collected, both by the developer and from other sources, and taken into account by the planning authority in forming the judgment on whether the development should proceed."

EIA has been defined under section 2(xi) of the Act as under:--

" environmental impact assessment means an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed.

On a simple level, EIA is as essential a tool as the feasibility report at the planning stage. It is an information-gathering exercise carried out by the developer and other bodies, which enables a local planning authority to understand the environmental effects of a development before deciding whether or not to grant planning permission for that proposal. The innovation behind the formal EIA process is the systematic use of the best objective sources of information and the emphasis on the use of the best techniques to gather that information. The ideal EIA would involve a totally bias free collection of information produced in a form, which would be coherent, sound and complete. It should then allow the local planning authority and members of the public to scrutinize the proposal, assess the weight of predicted effects and suggest modifications or mitigation (or refusal) where appropriate.[15] Environmental impact assessments have emerged since the 1972 Stockholm Conference as an important international and domestic legal technique for integrating environmental considerations into socio-economic development and decision-making processes. An environmental impact assessment describes a process, which produces a statement to be used in guiding decision-making, with several related functions. First, it should provide decision-makers with information on the environmental consequences of proposed activities and, in some cases, programmes and policies, and their alternatives. Second, it requires decisions to be influenced by that

information. And third, it provides a mechanism for ensuring the participation of potentially affected persons in the decision-making process.[16] Under clause 3 of the Policy and procedures for the filing, review and approval of environmental assessments, issued by the Government of Pakistan, the purpose of EIA is as follows:

* To ensure that decisions are taken following timely and sound advice;

* To encourage and provide opportunities for public consultation in environmental aspects of proposals before decisions are made;

* To ensure that proponents of proposals take primary responsibility for protection of the environment relating to their proposals, and carry the costs necessary for environmental protection;

* To facilitate environmentally sound proposals by minimizing adverse impacts and maximizing benefits to the community;

* To provide a basis for ongoing environmental management, including through the results of monitoring;

36. EIA is not complete and cannot be accepted for review by the EPA unless it clearly provides for the following essential constituents:

i. collection of data.

ii. prediction of qualitative and quantitative impacts.

iii. comparison of alternatives.

iv. evaluation of preventive, mitigatory and compensatory measures.

v. formulation of environmental management and training plans and monitoring arrangements.

The RIO Declaration emphasizes the importance of Public Participation in Principle 10 in the following manner:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Public hearing guidelines also place importance on meaningful public participation. "Guidelines for Public Consultation (Oct, 1997) provide the objectives:

1.3 Objectives of consultation

Public involvement is a feature of environmental assessment and can lead to better and more acceptable decision-making. It can be time consuming and demanding, yet without it, proposals are seldom soundly based, and there is likely to be antagonism from affected people. Public involvement, undertaken in a positive manner and supported by a real desire to use the information gained to improve the proposal, will lead to better outcomes, and lay the basis for ongoing positive relationships between the participants.

The objectives of public involvement include:

* informing the stakeholders about what is proposed;

* providing an opportunity for those otherwise unrepresented to present their views and values, therefore allowing more sensitive consideration of mitigation measures and trade- offs;

* providing those involved with planning the proposal with an opportunity to ensure that the benefits of the proposal are maximised and that no major impacts have been overlooked;

* providing an opportunity for the public to influence project design in a positive manner;

* obtaining local and traditional knowledge (corrective and creative), before decision making;

* increasing public confidence in the proponent, reviewers and decision-makers;

* providing better transparency and accountability in decision making;

* reducing conflict through the early identification of contentious issues, and working through these to find acceptable solutions;

* creating a sense of ownership of the proposal in the minds of the stakeholders; and

* developing proposals which are truly sustainable.

More intangible benefits flow from public involvement as participants see that their ideas can help to improve projects. People gain confidence and self-esteem through taking part in the process, and perceptions are expanded by meeting and exchanging views with people who have different values and ideas. The process of EIA cannot, for a moment, be trivialized to be a mere procedure that can be overlooked, ignored or bypassed as the environmental sustainability of the project relies on the effectiveness of this tool.

37. EIA is nature's first man-made check post, nothing adverse to the environment is allowed to pass through. It is for this reason,

that environmental assessment is an onerous function. It is through the tool of EIA that EPA gets to regulate and protect the environment and as a result the life, health, dignity and well-being of the people who inhabit the environment. Environmental Assessment is, therefore, a substantive exercise as every step in this process cautiously guards the fundamental rights of the people. Review of EIA is not inter parties or an adversarial exercise but are inquisitorial proceeding carried out under the public gaze and open to public scrutiny. The review process is incomplete without effective public participation and technical advice of the experts.

EIA review process

38. In the present case, the highhandedness of LDA and the Government marks the beginning of the Project. Even though the LDA had submitted an EIA for approval with the EPA, it did not think it important to await the approval before commencing the Project. EIA was prepared and submitted as routine requirement not for meaningful feedback. The guidelines followed as pointed out by one of the petitioner was not of major roads but of a Hatchery. This clearly shows the quality and seriousness of the document and the subsequent approval granted. Learned Counsel for the contractor has submitted that Rs.60 million has already been spent before the approval of the EIA. Section 12 of PEPA unambiguously states that the Project cannot commence without the approval of the EIA. The admitted position of LDA and the Government is that an EIA is required for the Project, therefore an EIA was filed with the EPA for approval. It is for this reason that an interim relief was granted to the petitioners and further work at the Project site was stopped.

39. Section 12 of the Act mandates that no project shall commence construction or operation unless the proponent has filed with the EPA, an EIA and obtained an approval thereof. Section 12(2)(b) provides that the EPA shall review the EIA and accord its approval subject to such conditions as it may deem fit or require that the EIA be resubmitted after such modifications as may be stipulated or reject the project as being contrary to environmental objectives. Section 12(3) provides that every review of EIA shall be carried out with public participation. Under section 12(7) the EPA shall maintain registers for IEE and EIA which shall contain brief particulars of each project and a summary of decisions taken thereof. The registers shall be open to inspection by the public at all reasonable hours. Section 34 provides that all rules, regulations, notifications issued under the earlier law shall be considered to have been issued under this Act unless they are inconsistent with the provisions of this Act.[17]

40. Under the Regulations, the process of review of EIA begins with the receipt of the EIA by the EPA. A preliminary scrutiny is to be conducted by the EPA within 10 working days. EPA is under an obligation to either confirm that the EIA is complete for purposes of initiation of the review process, or require the proponent to submit additional information or return the EIA to the proponent for

revision clearly listing the points requiring further study and discussion. EPA has to pass a speaking order explaining the option exercised by EPA. No such order has been passed in the present case.

41. Once confirmation of completeness has been issued under Regulation 9(1)(a), the process of public participation commences which requires that the public be put on notice and provided with an access to EIA filed by the proponent. Public participation also includes solicitation of comments from concerned government agencies. Public participation, which is akin to environmental democracy, and as provided above, is an integral part of EIA and affirms that public is the direct beneficiary of the environment and must be heard. Objections to the project raised during the public hearing have to be addressed by the EPA through a speaking order.

42. In this case, EIA approval dated 19-3-2015 passed by the EPA does not refer to or address a single objection raised by the public during public participation. The cosmetic public participation exercise conducted by the EPA amounts to playing a fraud on the people. Under the Regulations, the exercise of public participation requires EPA to solicit the views of other concerned government agencies which include departments, attached departments, development authorities, local authority, company or a body corporate established or controlled by the Government. No such exercise was undertaken. When asked in Court, DG had no explanation to tender. Regulation 10(5) provides that 'all comments received ...from the public or any Government Agency shall be collated, tabulated and duly considered by it before decision of the EIA.' Consideration of these documents by EPA can only be established through a speaking order which discusses and analyzes these comments. This speaking order has also to be retained in the register for EIA to be maintained by EPA under section 12(7) of the Act.

43. DG is the sole embodiment of EPA, therefore, the statutory support of the advisory and expert panels becomes all the more important and mandatory. Section 5(6) provides that for the assistance of the EPA in the discharge of its functions, the Government shall establish Advisory Committees for various sectors and appoint as members, eminent representatives of the relevant sector, educational institutions, research institutes and non-governmental organizations. No such Advisory Committee has so far been established by the Government.

44. Regulation 11(2) mandates that the EPA is to consult a Committee of Experts constituted for the purpose and may also solicit the views of the sectoral Advisory Committees constituted by the Government. As rightly provided under section 5(6) of the Act, the experts have to be neutral and independent persons with credible professional expertise and experience. The experts cannot be the staff members of the EPA or the employees of the EPD. In the present case, when the DG was asked whether a Committee of

Experts was constituted and then consulted. He sidetracked the question and submitted that the Committee of Experts was actually the Review Committee constituted under Notification[18] dated 17-12-2008 issued in the year 2008. The notification reveals that the Constitution of the Review Committee was as follows:

1. Director General	Chairman
2. Director (P&C)	Member
3. Director (EIA)	Member
4. Deputy Director (TT)	Member
5. Deputy Director (L&E)	Member
6. Deputy Director (EIA)	Member/Secretary

There is no mention of a Review Committee in Regulations 11(2), besides the members of the Committee include the Director General and other members of the staff of the EPA, which serves no purpose and cannot be equated with the Committee of Experts, specially constituted and designed, by selecting independent experts, to review the Project. In any case, the decision placed before us, after this Court had directed the EPA, to review the objections raised during the public participation is signed by three members instead of six, hence even the so-called Review Committee was never constituted. DG's reference to the Review Committee was to mislead the Court and clearly an afterthought to cover the omissions of EPA.

45. Under Regulation 11(4), the review of EIA by the EPA shall be based on quantitative and qualitative assessment of the documents and data furnished by the proponent, comments from the public and the Government agencies under Regulation 10 and views of the Committees mentioned in sub-regulations (2) and (3) of Regulation 11. The approval is to be granted by the EPA that is the DG, after considering the following documents:--

a. EIA filed.

b. Comments of the public and the government agencies received during the public hearing.

c. The report of the committee of experts

d. The report of the sectoral advisory committee

None of the above documents, except the EIA was referred to in the impugned approval.

46. The decision of the EPA must be communicated to the proponent in the form prescribed in Schedule VI of the Regulations. This does not mean that the EPA is relieved from passing a speaking order after considering all the material as described in Regulation 11(4). EPA is bound to pass a speaking order and the reasons must be clearly specified in item No.5(a) of the said Schedule. These reasons shall also be retained in the EIA register under section 12(7) of the

Act. Anything short of a speaking order offends Articles 4 and 10A of the Constitution.

47. The captured and beleaguered EPA could not have carried out an independent review of the EIA, besides the EIA review process is itself deficient in material particulars and cannot be sustained. We, therefore, set aside the EIA approval of the construction phase granted by DG, EPA dated 19-3-2015 to be violative of the right to life, dignity of the citizenry besides offensive to environmental justice and due process protected under Articles 4 and 10A of the Constitution.

Article 140A of the Constitution and the Local Government System

48. The constitutional journey from mere encouragement of local government institutions (Article 32) to imposition of constitutional duty (Article 140A as enacted through the 18th Constitutional Amendment) to establish Local Government Systems has been remarkably encouraging for democracy in our country. The creation of the third tier of government based on constitutional directive to devolve political, administrative and financial responsibility and authority to the elected representatives of the local government promotes our constitutional vision of a federalist state.

49. Article 140A of the Constitution has recognized and established the Local Government System in the country which is to be energized and empowered through devolution of political, administrative and financial responsibility and authority of the Provincial Government. This constitutional mandate is to be actualized by the Provincial Legislature by passing a law.

50. In order to address the questions framed at the beginning of the Judgment regarding Local Government System, it is necessary to chart the history, meaning and importance of local government, as well as, to understand its political architecture. The political economy of devolution and federalism requires understanding in order to grapple with the constitutional questions before us. Therefore, the views of the political scientists need to be discussed and internalized before embarking upon judicial interpretation of Article 140A of the Constitution.

Pakistan's historical experience with Local Government.[19]

51. One of the ironies of Pakistan's history is the paradoxically countercyclical pattern for local democracy. Three times in the history of Pakistan, elected institutions of local democracy have been created by military regimes, and each time the subsequent civilian governments have either failed to revive elected local governments or replaced them with unelected administrators (Cheema, Khan and Myerson, 2015[20]). During military regimes local government institutions were used by the non-representative centers to gain legitimacy by bypassing political parties at the provincial and national level (Cheema, Khan and Khwaja 2006, Cheema 2012[21]).

These institutions were designed to dilute the vital relationship between democratic politics at the local and national level, which thwarted the democratic transition.

52. Ironically empowered local governments under the military regime and the absence of vibrant local democratic institutions under civilian democracy have both weakened the connection between political parties and their grassroots bases. The absence of local democracy has also retarded the development of the municipal relationship between the citizen and the state,[22] which was a foundational pillar of democracy in the US and many parts of Europe.[23] National political parties have used local democracy to build the foundation of strong democracy, and deepen the base of their political parties, in a variety of international contexts that include Brazil, Turkey, West Bengal, Kerala (Heller 2001, Sambur 2009, Ghatak and Ghatak 2002[24]). Article 140A, which has been enacted by Pakistan's democratic political parties, and the requirement of party-based local elections are providing the leadership of Pakistan's political parties the opportunity to deepen their grassroots base and, in doing so, strengthen the vital relationship between local and national politics. It is now time to reform the post colonial local state in order to complete the transition to a strong democracy.

53. The survey of political and the Constitutional history of Pakistan reveals that in the ambiance of fragile political ecology "local governments were never ever taken seriously. The fragility of local governments can be further gauged by the fact that only two cycles of local government elections have been held since local governments were instituted under the military dictatorship of General Musharraf in 2001. First Local Government Elections were held in July/August 2001 and Local Government System became functional from August 14, 2001. Thereafter, Local Government Elections 2005 were held in three phases. Local Governments remained in power till 2009 for four years as Punjab Local Government (Amendment) Ordinance, 2005 on June 6, 2005 reduced the term to Four Years. Since February, 2010 amendment was made for appointment of Administrators. Since then administrators are heading the local governments. While elected local governments existed for only 8 years since 2001, elected federal and provincial governments have existed for 13 years.

Indian experience.

54. India had her Article 140A in the year 1993 in the shape of Articles 243 to 243ZG of the Indian Constitution when she like us was faced with similar challenges. Durga Das Basu in his Commentary on the Constitution of India writes that with the view to provide for setting up democratic institutions at the grass-root level, 73rd and 74th amendment to the Indian Constitution, Part IX and Part IXA along with 11th and 12th Schedules were introduced in the Indian Constitution.[25] The amendments were intended to give effect to Article 40 of the Directive Principles of State Policy, similar

to our Article 32, wherein States were directed to take steps to organize village panchayats and municipalities and vest them with such powers and authority as was necessary to enable them to function as units of self-government. The object of introducing these parts was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Election had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. The new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections.[26] The idea was to place the local self-government on a sound and effective footing. The amendments represent measures for decentralization of power and greater participation of people in self-rule. It decentralizes decision-making power from top to bottom in order to strengthen democracy at the grass-root level.

Article 243W reads as follows:

"Art.243W. Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow-

(a) The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provision for the devolution of powers and responsibilities upon Municipalities, subject to such condition as may be specified therein, with respect to-

(i) The preparation of plan for economic development and social justice;

(ii) The performance of function and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) The Committee with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters in the Twelfth Schedule.

The 12th Schedule, hereunder, provides for the core responsibilities which the people of India thought must always remain with the Local Government.

Twelfth Schedule

1. Urban planning including town planning.

2. Regulation of land-use and construction of buildings.

3. Planning for economic and social development.

4. Roads and bridges.

5. Water supply for domestic, industrial and commercial purposes.

6. Public health, sanitation conservancy and solid waste management.

7. Fire services.

8. Urban forestry, protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle ponds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.

The amendments to the Indian Constitution underline that the local governments shall function as institutions of self-government and will have core responsibilities to be performed by the Panchayats and the Municipalities (i.e., local governments) as provided in 11th and 12th Schedule.

South African experience

55. Section 151 (1) of the Constitution of South Africa, 1996 provides:-

151. Muncipalities in co-operative government

(1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.

(2) The executive and legislative authority of a municipality is vested in its Municipal Council.

(3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.

(4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

156. Powers and functions of municipalities.

(1) A municipality has executive authority in respect of, and has the right to administer---

(a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and

(b) any other matter assigned to it by national or provincial legislation.

(2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

(3) Subject to section 151 (4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.

(4) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 of Schedule 5 which necessarily relates to local government, if---

(a) that matter would most effectively be administered locally; and

(b) the municipality has the capacity to administer it.

(5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions. (emphasis supplied)

Schedule 4

FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCE.

PART B

THE FOLLOWING LOCAL GOVERNMENT MATTERS

TO THE EXTENT SET OUT IN SECTIONS 155(6)(A) AND (7)

Air pollution

Building regulations

Child care facilities

Electricity and gas reticulation

Firefighting services

Local tourism

Municipal airports

Municipal planning

Municipal health services

Municipal public transport

Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law.

Pontoons, ferries, jetties, piers and harbours excluding the regulation of international and national shipping and matters related thereto.

Storm water management systems in built-up areas

Trading regulations

Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

Schedule 5

FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE

PART B

The following local government matters to the extent set out for provinces in sections 155 (6) (a) and (7):

Beaches and amusement facilities

Billboards and the display of advertisements in public places

Cemeteries, funeral parlours and crematoria

Cleansing

Control of public nuisances

Control of undertakings that sell liquor to the public

Facilities for the accommodation, care and burial of animals

Fencing and fences

Licensing of dogs

Licensing and control of undertakings that sell food to the public

Local amenities

Local sport facilities

Markets

Municipal abattoirs

Municipal parks and recreation

Municipal roads

Noise pollution

Pounds

Public places

Refuse removal, refuse dumps and solid waste disposal

Street trading

Street lighting

Traffic and parking.

Section 151(4) of the Constitution provides that "...provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

Section 156(1)(a) of the Constitution provides that a municipality has authority over the local government matters listed in Schedules 4B and 5B. Municipalities derive these "original" powers from the Constitution itself.[27] A municipality also has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its Schedules 4B and 5B functions.[28]

56. The National Assembly has a general discretion to assign any of its legislative powers to a specific municipal council or to municipalities in general.[29] Provincial Legislatures have a similar power with respect to municipalities in their province.[30] A national or provincial minister may assign any power or function that is to be exercised in terms of an Act of Parliament or a provincial Act to a municipal council provided the latter is in agreement with the assignment.[31] In some instances there is an obligation to assign a function. A provincial government must, in terms of section 156(4) of

the Constitution, assign to a municipal council the administration of a matter listed in Schedule 4A or 5A if four conditions are met:

(a) the matter in question "necessarily relates to local government;

(b) the matter would most effectively be administered locally;

(c) the municipality has the capacity to administer it; and

(d) the municipal council agrees to the assignment.

With regard to municipal by-laws, the basic rule of paramountcy is that a by-law in conflict with valid national or provincial legislation is invalid.[32] However, in some instances, a by-law may trump a provincial or national law. A national or provincial law will not prevail over a by-law if it "compromises or impedes a municipality's ability or right to exercise its powers or perform its functions .[33] This may be interpreted to mean that the national and provincial governments may not use their legislative powers in an unduly intrusive or too prescriptive manner.[34]

The Indian and the South African constitutions establish that Local Government has "core responsibilities which in their countries have been listed out in the Constitution. While the South African constitution additionally provides for the autonomy of the Local Government so that these core responsibilities are performed without any interference by the higher tier of governments.

The 18th Constitutional Amendment as a radical departure[35]

57. Article 140A, represents a radical departure from the past in terms of the constitutional status of local governments. Prior to Article 140A local governments lacked any constitutional protection in Pakistan and their basic design was at the discretion of the provincial legislature. The extent of constitutional protection in Pakistan at the time was similar to federations such as Australia, Canada and the United States. None of these countries provide protection to local governments in their Constitutions. The 10th Amendment to the United States Constitution makes local governments a matter of state rather than federal law. It neither prohibits nor requires states to establish local governments. Likewise section 92(8) of Canada's Constitution Act, 1867 mentions local government only to make it clear that it is a responsibility of the provinces. In these Constitutions local governments fall under the legal purview of the provinces or states that have untrammeled power to reorganize these governments. In the period preceding 140A local governments were seen as agents of the provinces as the Constitution did not provide any framework about the basic architecture of this system of government. This gave the provinces complete authority to define the design of local governments including the assignment of functions. This was akin to the legal concept of "Creatures of the State in US federal law, which is embodied in Dillon's Rule[36] that holds that the political subdivisions

of a state owe their existence to grants of power from the state. This design precludes local governments from acting as tiers of self-government. It is, however, important to recognize that in these countries, unlike South Asia,[37] elected local governments were well entrenched long before the establishment of their independent national governments.[38] The enactment of Article 140A through the 18th Amendment has radically altered the constitutional status of local governments in Pakistan. Local governments are no longer a matter for principles of policy as the Constitution now mandates that "each province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments. The fact that the framers of the 18th Amendment chose to enact 140A, in spite of its historical antecedents being tied to the Musharraf regime, shows the importance that they placed on creating meaningful and functional local democratic governments. The commitment of the democratic parties to this Article can be gauged from the fact that while the 18th amendment repealed many of the other constitutional amendments enacted by the dictatorial regimes of Generals Zia-ul-Haq and Pervaiz Musharraf, it chose to retain Article 140A.[39] Survey of eight developing countries, including: Bolvia, Indonesia, Pakistan, Uganda, Chile, Brazil, India and South Africa; found that only Pakistan and China did not grant local governments independent constitutional authority at this time. Article 140A has ensured that Pakistan is now part of the rising trend in developing countries of providing local governments constitutional protection.

58. We agree with Professor Osama Siddique, learned amicus curiae, that Article 140A denotes the logical culmination point of the wave toward devolution in the federal structure of governance that has taken shape over the last decade or so. Distinct from the Basic Democracies of the 1960s where the purpose was to displace directly elected public representation at the provincial level and to create a separate constituency loyal to the regime. Now the clear intent is to deepen democracy and create a distinct third tier of public representation at the local level.

59. Without a clear vesting of certain core functions with the local government it will be unable to play its role -- for democracy to deepen, for diverse opinions and legitimate interests to be taken into account, for service delivery to be closer to and held accountable by the people, for institutions to build capacity and expertise etc., local government institutions have to be empowered and given definite functions - they are not envisioned by Article 140A to be an agent or an underling of provincial governments but a distinct and empowered third tier of elected governance. Abolition of the concurrent list also indicates the move away from overlapping powers - therefore, distinct core activities envisioned for federal, provincial and local levels with frameworks and mechanism for dialogue and negotiations where more than one interest is at stake

or where two or all three need to play their respective roles or where there is justification for one to prevail over the other.

60. Article 140A does not envision the local government to be nominal or residual or merely symbolic anymore but a real empowered stakeholder and a breeding ground for deeper and more public responsive politics. The idea is a move away from top down management and governance but for ideas, aspirations and imperatives to flow upwards to macro level.

Scope of Article 140A

61. Earlier Article 140A was inserted in the Constitution by item No.16 of the Schedule to Legal Framework Order, 2002 (Chief Executive's Order No. 24 of 2002) w.e.f 21-8-2002 (as reproduced below) and later validated by section 10 of the Constitution (Seventeenth Amendment) Act, 2003 (III of 2003) w.e.f 31-12-2003. Earlier Article 140A was as follows;

Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

Article 140A has been substituted through section 48 of the Constitution (Eighteenth Amendment) Act, 2010 (X of 2010) in its present form w.e.f 19-4-2010 and provides as follows:--

140A. Local Government-- Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

(2) Elections to the local governments shall be held by the Election Commission of Pakistan.

Principle of Policy under Article 32 of the Constitution, provides that State shall encourage local government institutions composed of elected representatives of the areas concerned (somewhat similar to Article 40 of the Indian Constitution). Local Government Act, 1975 and the Local Government Ordinance, 1979 drew its constitutional support from this principle of policy.

62. Article 140A, in effect, actualizes this principle of policy into a constitutional obligation and duty. The Constitution under Article 140A recognizes the need for a local government and creates a constitutional obligation on the Provinces to establish a Local Government System by law. The constitution further mandates that the provinces shall, by law, devolve their political, administrative and financial responsibility and authority to the elected representatives of the local government. The political significance of a local government is further underlined when under Article 140A(2), which commands that the elections to the local government, like the national and provincial assemblies, shall be

held by the Election Commission of Pakistan. The electoral recognition adds constitutional weightage to the political importance of the local government and firmly establishes local government as a third tier of government in our political landscape.

63. Interestingly, Article 140A, in this case, unfolds questions of constitutional importance. The architecture of powers to be vested in a local government system by the provincial legislature? The scope of autonomy enjoyed by the elected local government while exercising those powers ? The vertical separation of powers enjoyed by the provincial government and the local governments? And the constitutionality of any provincial authority like the LDA to trump or usurp the powers allocated to the elected local government?

64. Before the above questions can be fully answered, it is useful to examine the taxonomy of governments and the symbiotic relationship between federalism, subsidiarity, local government and vertical separation of powers within the same tiers of the institution (as opposed to the traditional horizontal separation of powers).

Federalism, Local Government, Democracy, Devolution and Subsidiarity.

65. Federalism is a system of government in which power is divided between a central authority and constituent political units.[40] Justice Stephen Breyer of the US Supreme Court describes Federalism as "an idea that concerns the level of government at which Americans should try to solve common problems.[41] He goes on to explain:

"...constitutional federalism helps democracy itself work better by assuring state and local officials broader decision-making power, simultaneously places greater power in the hands of the those who elect those officials. That smaller number of people can better understand the nature of local problems. They can more easily communicate with those who stand for office and can more accurately evaluate the work of their elected officials. Moreover, by placing power in local communities, federalism reflects the democratic ideal and encourages citizens to participate in government, particularly in local government, where they can more easily make a difference.

In addition, constitutional federalism is practical. Those whom a problem affects more directly our more often likely to understand it and find ways to resolve it... [a]t the same time, a national bureaucracy, subject to the control of national officials and a national electorate, is needed to deal with issues that are national in scope such as those associated with foreign affairs, war, interstate commerce, and much of the environment. Ideally, constitutional federalism matches the issues with government units that will best handle them.

Constitutional federalism reflects a further practical idea -- the benefits of experimentation. In the mid 1930s depression, Justice

Brandeis, in his New State Ice[42] dissent, succinctly expressed this idea: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizen choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." The value of not adopting a solution, even to a national problem, to quickly; of trying different approaches; and of trying out different ideas before committing the nation to one approach - all of these reasons call for ensuring that states have a constitutional leeway to experiment."[43]

The term "Local Government literally means management of the local affairs by the people of the locality. It is based on the principle that the local problems and needs can best be addressed by the people of the locality rather than by central or state governments. Local government is a prime element of democracy and demonstrates the intrinsic values of democracy, irrespective of the services it provides in it. Government is truly representative when all types of people can take part. The local government level offers the closest things to widespread consultation and participation.

66. United Nations documentary on public administration defines local government as a political sub-division of a nation or state which is constituted by law and has substantial control of local affairs, including the power to impose taxes or to enact prescribed purpose.[44] "Local inhabitants representing local body possessing autonomy within its spheres, raising revenue through local taxation and spending its income on local services constitute the local self government."[45] According to Michael Keating "Local Governments are seen as associations of individuals choosing to govern their own affairs, defining their boundaries and negotiating their powers."[46] Professor W.A. Robson opines that Local Government may be said to involve the conception of a territorial, non-sovereign community possessing the legal right and the necessary organization to regulate its own affairs. This in turn presupposes the existence of local authority with power to act independently of external control as well as the participation of the local community in the administration of its own affairs."[47] On a political dimension, the operational freedom to fulfil local needs and aspirations with necessary popular mandate is the hallmark of local government, it is thus a variant of democracy.

67. The Local Government System is established and empowered through the process of decentralization. The logic behind decentralization is not just about weakening the central authority, nor is it about preferring local elites to central authority, but it is fundamentally about making governance at the local level more responsive to the felt needs of the large majority of the population.[48.]

68. Under Article 140A the Constitution establishes the structure of a Local Government System which rests on devolution of political, administrative and financial responsibility and authority upon the elected representatives of the local government, however, the areas

of responsibility and authority to devolve rests on the provincial legislature.

69. The nature and degree of decentralization is important. Decentralization,[49] is "a process of transferring responsibility, authority, and accountability for specific or broad management functions to lower levels within an organization, system, or program. Different dimensions of decentralization are: (i) administrative decentralization- how responsibilities and authorities for policies and decisions are shared between levels of government and how these are tuned into allocative outcomes. (ii) fiscal decentralization - the assignment of expenditures, revenues and borrowing amongst different levels of governments. (iii) political decentralization - how the voice of citizens is integrated into policy decisions and how civil society can hold authorities and officials accountable at different levels of government. Modes of decentralization include: Deconcentration, Delegation and Devolution.

70. Deconcentration is the shallowest form of decentralization and the least ambitious level of decentralization, where responsibilities are transferred to an administrative unit of the central government that is spatially closer to the population where service is to be provided, usually a field or regional office. Delegation is an intermediate level of decentralization, where some authority and responsibilities are transferred to a lower level of government, but there is a principal-agent relationship between the central and sub-national government in question, with the agent remaining accountable to the principal. Devolution is the deepest form and most ambitious form of decentralization, where the central government devolves responsibility, authority, and accountability to sub-national governments with some degree of political autonomy.[50] The most influential definition of "devolution in the local government literature is by Rondinelli, et. al. (1983)[51]. In their definition[52] "devolution creates or strengthens sub-national units of government, the activities of which are substantially outside the control of higher-tier governments. Local governments are defined to be independent, autonomous, and usually have exclusive authority over explicitly reserved functions. The word "devolve means to transfer from one person to other; to deliver over or hand down, as from ancestor to heirs; to roll or tumble down or descend, to be transmitted by course of events or by operation of law, to pass by transmission to another, from a person dying to a person living, or from the possessor to a successor.[53] In other words "to transfer rights, duties, or powers to another. [54]

71. Devolution, therefore, signifies transfer of power from the provincial government to the local government. The scope and nature of power, the "core functions," to be transferred can be by the Constitution itself or left to the discretion of the provincial legislature. In the context of this case, once complying with the constitutional mandate under Article 140A, the trinitarian devolution i.e., political, administrative and financial, takes place, the elected local government enjoys the autonomy and independence

to exercise these powers to the exclusion of other executive functionaries. Any interference or dilution of this power by the provincial government or any other authority, without there being any change in the legislative design, which draws its power under Article 140A, would render a democratically elected local government totally otiose. Any interference in the political, administrative and financial space of the Local Government System, would be undemocratic and not in step with the constitutional vision.

72. Post 140A, PLGA has been promulgated and powers have been devolved to the local governments. In the present case, the local government is the Lahore Metropolitan Corporation (LMC) and section 87 of the PLGA lists down the powers and functions to be exercised by LMC. It is important to understand that provincial legislature does not devolve power randomly but is bound by political logic, which emerges from federalism. The foundational theme on which our constitutional construct rests. Within the broad contours of federalism this political logic finds its roots in the age old principle of subsidiarity.

73. The notion of subsidiarity originated in the ancient times and has to do with conditions of subsistence and support. It is derived from the Latin root subsiduum, which refers to assistance in terms of the smaller matters of life.[55] It also literally means "to seat" ('sid') a service down ('sub') as close to the need for that service as is feasible."[56] Johannes Althusius, a writer and a philosopher, set forth his ideas in his work Politica Methodice Digesta published in 1603. He maintained that freedom does not emanate from the sovereignty of the larger whole, but from the autonomy of the smaller parts. The concept of "subsidiarity originated in late medieval religious thought, yet it provides one general method for applying federalism in this more democratic age. Subsidiarity insists that governmental power to deal with a particular kind of problem should rest in the hands of smallest unit of government capable of dealing successfully with that kind of problem. One begins by assuming that power to solve a problem should remain at a local level. One then asks whether it is necessary to abandon this assumption in order to resolve the problem. One can continue to ask this question, level by level. And one should answer it by climbing no higher up the governmental unit ladder than necessary to deal effectively with the problem.[57] Justice Breyer in his book, Making Our Democracy Work writes; "As used today and considered in general terms, the principle of subsidiarity incorporates an approach that can help guide….policy makers. The approach sees power as flowing from 'below,' it finds democratic advantages in localism, and its sees practical value in local control and local experimentation. So viewed, the concept incorporates the historical, democratic, and practical ideas that underlie American constitutional federalism. The underlying thought, like that of the constitution itself, is that the national government should resolve national problems while state and local governments should retain the power to deal with more local

problems, with which they are more likely to deal effectively." Subsidiarity is embedded in social justice and requires that "all social bodies exist for the sake of the individual so that what individuals are able to do, society should not take over, and what small societies can do, larger societies should not take over. In a political system it is the principle of devolving decisions to the lowest practical leve.[58]"

74. Federalism and the principle of subsidiarity, offer the means to accommodate widely divergent political realities within nations. "The principle of subsidiarity maintains that issue areas and political authority are only exercised at the national state level if it is deemed necessary by the constituent units, and if the issue or political authority would better be dealt with at the national level. Otherwise, political authority should remain in the hands of the units which actually constitute society, or at more localized levels of political society. It is only through recognition and respect for this principle that nation-states can be legitimate aggregates of human political society. Subsidiarity implies that political authority ultimately rests with the constituent units of society, and is only transferred to a federal/national level of it is absolutely necessary.[59] According to Carl Schmitt; "control of the territory by the state may occur in two ways; either with the territorial articulation of power among the parts on the dependent whole- the centre- which monopolizes control; or with one where everything, including the centre, depends on the parts, and central control is distributed between the whole and the parts. The first is a unitary state, while the second is a federal one.[60]" Federalism divides sovereignty of the state between a central government and regional governments, and often times even a third order such as at local or municipal levels of government.

75. The principle of subsidiarity therefore holds that where local communities or local governments can effectively govern and manage a municipal service, they should. Where they cannot, provincial government should intervene. Only when the local governments prove ineffective or the matter spills over the local area, should the provincial government become involved. In the words of Marvin Olasky "if it is necessary to turn to government, go first to city, then to country, then to state and only then to federal offices."[61] "Subsidiarity, at its core, envisions a society in which problems are solved and decisions made from the bottom up. As a model of governance, subsidiarity offers no shelter to those who seek the unbridled expansion of centralized government, not to those who disregard the need for a vital government role in making an empowered and connected citizenry a reality. Stripped of its partisan baggage, subsidiarity offers a model that- rooted in social justice tradition that stresses both individual liberty and communitarian values-rejects the alienations of both the market and centralized government, embracing instead individuals and the mediating structures to which they belong."[62]

Article 140A and scope and autonomy of local governments[63]

76. Subsidiarity and the structure of local government system emerge from the broad principles of political, social and economic justice guaranteed to the citizens under the Objectives Resolution to the Constitution and having subsequently become a substantive part of the Constitution under Article 2A. The legislative competence enjoyed by the provincial legislature, after the 18th amendment is informed and fashioned by Article 140A when it comes to resurrecting local government system in the Province. Article 140A also "constitutionally defines a basic architecture of local government systems that consists of "devolving" political, administrative and financial responsibility and authority to its elected representatives. The "devolution" of this critical bundle of responsibilities and authorities, which defines government, to elected representatives suggests that the framers of the 18th Amendment are no longer relegating local governments to play the role of agents of provincial governments. Instead they are envisaging a tier of democratic government that has "autonomous control, which needs to be assigned a meaningful set of core responsibilities and functions to enable it to deliver to the citizenry. This view is echoed by the ruling party's [PML(N)] 2013 Manifesto, which states that "apart from consolidating democratic institutions and traditions at the federal and provincial level, the imperative of democratic governance can be fulfilled only through further decentralization by devolving administrative and financial powers to elected representatives at district and lower levels." It explicitly expresses its commitment to implementing 140A of the 1973 Constitution. It further elaborates that in implementing Article 140A, PML(N) will ensure that the new laws providing for a new local bodies system in replacement of the 2002 system are adopted by consensus and that they provide for optimum devolution and decentralization of administrative and financial powers. The use of the term "devolution" needs to be understood as it has been used in both Article 140A and the PML(N) 2013 Manifesto. As argued earlier the most influential definition of "devolution" in the local government literature is by Rondinelli, et. al. (1983)[64]. In their definition "devolved" local governments are defined to be independent, autonomous, and usually have exclusive authority over explicitly reserved functions.

77. Faguet (2011)[65] points out that "autonomy" is defined by the Oxford English Dictionary as "of a state, institution etc: The right of self-government, of making its own laws and administering its own affairs." Rondinelli et. al's (1983) definition of "devolution," therefore, implies autonomy and local self-government instead of these governments being an agent of a higher-tier of the state. Item 10 of the Charter of Democracy (2006), the magna carta underlying the 18th Amendment, clarifies that the notion of "devolution" that the farmers of the Amendment, and hence 140A, had in mind corresponds closely to Rondinelli et. al.'s (1983) definition of the term. Item 10 of the Charter states that "constitutional protection will be given to the local bodies to make them autonomous and answerable to their respective assemblies as well as to the people."

This is a clear commitment to the constitutional protection of local governments that are envisaged as "autonomous" institutions of self-government. This historical evidence suggests that the 18th Amendment does not envisage local governments as "agents or creatures of the province." The condition of "autonomy places a limitation against any encroachment by provincial governments into a "minimum set of core functions" that allow these institutions to act as meaningful governments whether on account of centralization or by creating overlapping mandates.

78. Article 140A, in our view, suggests that the assignment of functions to the local tier remains the prerogative of the provincial legislature subject to the limitation that this tier cannot be stripped off a core bundle of functions over which it is empowered to exercise self-government. Diluting the core bundle beyond a minimum threshold through centralization is tantamount to stripping these governments of their basic functionality as a tier of government.

79. The interpretation of Article 140A is that while local government legislation comes under the purview of the provincial legislature, this does not make provincial governments the "controlling authority of local governments. While this interpretation acknowledges that local governments will have to function within the substantive framework established by the provincial legislature, it also makes clear that any framework established by the provincial legislature has to conform to Article 140A and, hence, devolve a meaningful set of core local functions to comply with this provision. It is, therefore, important for provincial legislatures to review the existing assignment of functions to ensure that this set fulfills the condition that local governments have been provided a meaningful core bundle of functions on which provincial departments do not have overlapping jurisdictions. Failure to meet the latter condition will limit the local governments' ability to act as institutions of self-government, which is not consistent with Article 140A.

80. Gough[66] (2009, pp. 22-27) has conducted a comparative analysis of local functional assignment for England, South Africa, Canada, Australia, Netherlands, Germany, France and Netherlands. This sample includes unitary and federal states. He finds that in all these countries "there is a core of activities," with local governments that include town and local planning, waste collection and disposal, some utilities usually water, local roads, some public transport and amenity services that include parks and open spaces, sports and leisure and cultural facilities. Similarly, the United Cities and Local Governments Global Report 2008[67] surveys the assignment of functions in around 85 countries across all regions of the globe and finds that "(m)ost countries have devolved a core set of local functions"... that include "local public services, like water connections, streets, solid waste, local markets, urban and land use planning, and primary care in health...and sometimes economic development and housing." Bardhan and Mookherjee (2006) map local functional assignments for their sample of eight developing countries. They find that six out of eight of these countries assigned

primary education and health and welfare programs to local governments. They also find that all countries in their sample had assigned local infrastructure, which includes local roads, water, sanitation and town planning to the local tier. This analysis shows that comparative analysis can be a useful method of determining a minimum core set of activities for local governments by the provincial legislature. The main limitation with this method is finding the right comparison group.

81. The theory of fiscal federalism provides guidelines for assigning expenditure and regulatory functions across different tiers or spheres of government. The basic argument proposed by the literature on fiscal federalism is that functions are provided most efficiently "by the jurisdiction having control over the minimum geographic area that would internalize benefits and costs of such provision" (Frey and Eichenberger 1999)[68]. Put more simply, functions should be allocated to a tier of local government whose boundaries are defined by the area in which citizens enjoy the benefits of the provision. For example, the benefits of national defense and foreign policy are enjoyed by all citizens and hence the function should be assigned to the federal government. On the other hand, the benefits of street lighting are only enjoyed by households living in a street and their visitors and may be assigned to a neighborhood council. This is also called the decentralization theorem (Oates 1972[69]). The underlying premise of this principle is that localities differ in their needs and preferences. Efficient delivery in this context implies cost-effective provision that corresponds to the needs and preferences of a particular locality. The local tier is argued to result in more efficient provision as it is likely to be better informed about the specific needs and preferences of the local community (Glaeser 2012, Faguet 2004, Shah 1999)[70]. Second-generation theories of fiscal federalism ground the argument for decentralization in political economy (Mookherjee 2015, Weingast 2013)[71]. This literature argues that decentralization is likely to improve service delivery outcomes by enhancing political accountability, expanding the pool of quality political leadership and enhancing citizen participation. There are three different variants of the political accountability argument in the literature. Cremer et. al. (1995)[72] and Seabright (1995)[73] argues that decentralization combined with local democracy results in efficient provision by enhancing the accountability of local providers (Mookherjee 2015). The main argument is that accountability is strengthened under decentralization because the welfare of local citizens determines the re-election of government. The same is not true of centralization as the local area votes do not matter as much for the re-election of higher tier governments. This literature also argues that centralized provision is likely to result in considerable misallocation of resources as the minimum political coalition governing the central tier may not include or be dominated by representatives of a particular locality (Besley and Coate 2003, Lockwood 2002)[74]. Besley and Case (1995)[75] argue that a comparative advantage of decentralization is that it permits yardstick competition that can be

used by citizens to benchmark their government's performance against other governments (Mookherjee 2015). This benchmarking can be used to discipline governments through the electoral mechanism, which will enhance political accountability. A different strand of the literature argues that devolved systems increase the quality of political leadership as they become screening devices for governance talent. This is because governing local governments allows local political leaders to develop reputations for governance, which they can use to become contenders for higher level office (Myerson 2014, Cheema, Khan and Myerson 2015).[76] Local governments have been critical in providing leadership for higher tiers in countries as diverse as Turkey, China and the United States. An important complementary argument to the decentralization theorem is the need for a clear assignment of responsibility between different tiers of government (Dollar and Hoffman 2008, Shah 1999)[77]. This is because the absence of a clear assignment could result in unfunded mandates for local governments because of encroachment by the higher tiers. It also compromises accountability as citizens are unclear which tier of government has the primary responsibility for delivery. This may well result in voter disillusionment with local governments.

82. There is a consensus that decentralized provision is inefficient for functions that result in inter jurisdictional spillovers and entail economies of scale. Spillovers arise when non-residents enjoy the benefits or bear the costs of provision by a local government. The case where a district government sets up factories that dump waste water in the neighboring district is an example of negative spillovers. However, if the same factories create employment for workers residing in the neighboring districts this is an example of positive spillovers. Negative spillovers create a problem because they have created costs for a jurisdiction that has no political or contractual control over the extent of the provision. Positive spillovers are an issue because the citizens of the neighboring district are enjoying a benefit for which they are bearing no cost. Therefore the presence of spillovers provides a justification for centralizing functions in high-tier governments or establishing institutions that can coordinate between different local governments. The principle is that the function should be assigned to a jurisdiction whose boundary includes all citizens who benefit or lose from the provision of a function with spillovers. The larger the spillovers the higher the tier to which the function needs to be assigned (Mookherjee 2015, Shah 1999, Oates 1972).

83. In conclusion, the principle proposed by the literature is that local governments should be assigned functions that do not entail spillovers and also do not entail significant economies of scale to justify provision by a higher tier of government or mechanisms created enabling local governments to act together. In the case of spillovers and economies of scale functions should be assigned to higher tiers of government. In any analysis of roles, relationships and functions, the principal of 'subsidiarity' is critical. This principle

can be used by the provincial legislature for the local assignment of functions. It states that the lowest level of government should deliver government services because it knows the demands from consumers-voters best unless significant spillovers and economies of scale exist. It is important to point out that this principle delimits the domain of different tiers of governments on both a geographical and functional basis (Faguet 2011). The principle of subsidiarity has been used as an underlying principle of functional assignment in a range of jurisdictions. It has been used in the European Charter for Local Governments (Article 4(3)), as part of the South African Constitution (Articles 151(4) and 158 (4)) and the French Constitution among others (Article 72). The principle of subsidiarity has also been recognized as critical by the Independent Metropolitan Local Government Review Panel (2012) in Australia.

Local Governments as institutions that strengthen federal democracy

84. Professor Roger Myerson,[78] 2007 Nobel Laureate in Economic Sciences and Professor at the University of Chicago, as an amicus, made his submissions through email in the following manner: "I have taken the time to study and write about Pakistan's local governments because I share people's hopes building stronger federal democracy in Pakistan and because I see compelling theoretical reasons why democratic local government may be vital for building stronger democracy at all levels in Pakistan. The key to successful democratic development is to increase the nation's supply of leaders with good reputations for managing public resources responsibly for public service.[79] The large number of elected local offices should offer the greatest number of opportunities for local leaders to begin developing such reputations for good public service. Elected offices in local, provincial, and national governments should form a ladder of democratic advancement, on which politicians can hope to rise by providing better public service to their constituents. Then parties can gain greater confidence of voters in provincial and national elections by nominating trusted candidates with proven records of good service in local government...on the question of local control of city planning and infrastructure development, there are good reasons to believe that locally elected governments can help economic development by providing better mechanisms for local public investments.[80] When the quality of a local public investment can be observed only by local residents, then the official who has responsibility for the public investment can be held properly accountable for its quality only by local voters. A poor community can mobilize its resources for public investments that are essential for its economic development only when members of the community are coordinated by local leaders whom they can trust to appropriately reward contributors and discipline free-riders. Such trust can be expected only from leaders whose authority is based on local politics.

Pakistan's federalist state and the doctrine of separation of powers.

85. "The doctrine of separation of power divides power horizontally, between institutions at the same tier. The division typically takes place between three bodies; the legislature, executive, and the judiciary. Whatever conception of separation of powers a people embrace, the animated theme of the doctrine of separation of powers is to prevent power from vesting in a single body. Typically this is thought to preserve liberty as the concentration of authority is avoided…It is worth noting that the doctrine is also thought to encourage democratic deliberation. Because competing claims are constantly asserted, dialogue is facilitated, and through pretending a single body from enjoying supremacy, each body checks and balances one another.[81] Madhav Khosla[82] has argued that this doctrine moves beyond its typical parliamentarianism, as the constitutions also provide for an internal separation of powers within all the three traditional branches of government and in this way shape the institutional dynamics of democracy. Federalism introduces vertical separation of powers within the same institution. The Provincial legislature under Article 140A has promulgated PLGA and assigned certain executive powers to the elected local government creating a vertical separation of powers between the executive authority of the Provincial Government and the Local Government. On this construct stands our federalist state and the Local Government System. This vertical separation can be maintained if the political, administrative and financial autonomy of the political units is protected down the democratic ladder. This vertical separation of power is buttressed by Article 17(2) of the Constitution whereby every person has a fundamental right to form or be a member of a political party so that he can participate in the political life of the country. This right would be rendered meaningless if the elected political party in the Local Government System is not allowed to function in the devolved political, administrative and financial space allowed by the provincial legislature and if the citizen is not permitted to participate in this political space. Any provincial law that thwarts or restricts the elected local government from performing its functions under the law offends Article 17(2) of the Constitution. The principles of political and social justice guaranteed under the Objectives Resolution to our Constitution and now substantive part of our Constitution under Article 2A further support this vertical separation. Therefore, when the clearly delineated devolved powers of the local government are in any manner abridged, diluted or impeded by the provincial government or through its instrumentalities like the LDA, it offends the constitutional principles of political and social justice besides the fundamental rights to life, dignity and political participation.

86. PLGA succinctly captures the constitutional obligation in its preamble which states: "Whereas it is expedient to establish an elected local government system to devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments; to promote good governance, effective delivery of services and transparent decision

making through institutional participation of the people at the local level..." PLGA establishes (section 6) a number of local areas namely: Lahore District as the Metropolitan Corporation; rural area in a district, other than the Lahore District, as a District Council; urban area in a district, other than the area of a Municipal Committee, as a Municipal Corporation and urban are in a district, other than the area of a Municipal Corporation, as a Municipal Committee. In the present case, we are concerned with the Lahore Metropolitan Corporation (LMC). The local governments constituted under PLGA are Metropolitan Corporation for Lahore, Municipal Corporation, Municipal Committee, District Council, Union Council, District Education Authority and District Health Authority. The Metropolitan Corporation is a body corporate having perpetual succession and a common seal, with the power to acquire, and hold property, enter into contracts, sue and be sued in its name (section 86). The functions of MCL, inter alia, are as follows:

(a) approve spatial plans, master plans, zoning, land use plans, including classification and reclassification of land, environment control , urban design , urban renewal and ecological balance.

(b) Approve proposal for public transport and mas transit systems, construction of expressways, fly-overs, bridges , roads, under passes and inter town streets;

(c) Approve development schemes for beautification of urban areas;

(d) Develop integrated system of water reservoirs, water resources, treatment plants, drainage, liquid and solid waste disposal, sanitation and other municipal services;

(e) Execute and manage development plans;

(f) Exercise control over land-use, land sub-division, land development and zoning by public and private sectors for any purpose, including agriculture, industry, commerce markets, shopping, and other employment centres, residential, recreational , parks, entertainment, passenger and transport freight and transit stations:

(g) Roads and streets;

(h) Traffic planning, engineering, parking places, transport stations, stops, stands and terminals;

(i) Environmental control , including control of air, water and soil pollution in accordance with federal and provincial laws and standards;

(j) Undertake urban design and urban renewal programmes;

(k) Undertake landscape, monuments and municipal ornamentation;

(l) Prepare budget, revised budget and annual and long term municipal development programmes.

(m) Approve rates and fees;

(n) Collect approved taxes, fees, rates, rents, tolls, charges , fines, and penalties;

(o) Develop and manage schemes, including site development;

(p) Prepare financial statements and present them for internal and external audit in the manner prescribed.

These provisions clearly delineate the devolved core functions and responsibilities of the local government (LMC).

87. The Mayor is the executive head of a Metropolitan Corporation (section 89). Chief Officer is responsible for coordination and other functions (section 90). Financial devolution provide for local government finance under the PLGA which includes the establishment a Local Fund and maintenance of a Public Account (section 100). Through Punjab Finance Commission (section 110), the financial share of the local governments is transferred to the local governments as Provincial Allocable Amount, which provides the financial autonomy to the local government to plan, undertake and execute the local government functions. As a part of the financial devolution, the Local Government has been authorized to levy taxes under, fee, rates, etc. under section 115.

88. Regarding matters that concern more than one local government either due to "spill overs or due to "economies of scale e.g., the setting up of a highway or a dam or laying pipelines or transmission lines through the Province, etc. These matters move up to higher level of government and do not remain within the core functions of the local government. These matters can best be resolved through political dialogue and negotiations and the Punjab Local Government Commission, besides other functions, plays this vital role of coordination.

89. Section 4 which provides that the local government shall work within the Provincial framework and shall faithfully observe the Federal and Provincial laws. Provincial framework is not a term of art or a term defined under PLGA. Dictionary meaning of the word "Framework is a basic structure underlying a system. Provincial framework, in legal parlance, cannot mean more than the sum total of all the provincial legislation, primary or subordinate. Hence all the laws, rules, regulations and instructions form part of the Provincial framework. Section 4(1) requires the Local Government to work within the Provincial framework. This to us means that the elected Local Government while performing its devolved functions under the PLGA, will be complimented by the Provincial framework. It is not to mean that the Provincial framework will restrict, impede, interfere or dilute the powers or the functionality of the Local Government. In

case of any conflict between the Provincial framework, which does not include PLGA, which enjoys special status and protection under Article 140A, the devolved powers under the PLGA will take preference over the provincial law and hence allow the local government operating under the said law to maintain its autonomy. If the provincial laws are allowed to usurp or trump these devolved responsibility and authority of the local government under PLGA, it would render Article 140A otiose besides offending the constitutional values of democracy, political, economic and social justice, which are guaranteed to the citizens under the Objectives Resolution. Further constitutional support comes from the constitutional Principles of Policy which encourage local government institutions [Article 32] and direct to decentralize the government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirement of the public [Article 37(i)]. Article 29 of the Constitution mandates that it is the responsibility of each organ or authority of the State to act in accordance with the Principles of Policy in so far as they relate to the functions of the organ or authority. This means two things: One that any organ or authority of the State will act in accordance with the Principles of Policy. For example in this case, the functions devolved to the local governments under PLGA have to be exercised by the Local Government to the exclusion of the Provincial Government. Second, which is a natural corollary, that the organ or authority, will not take any step that reverses or rolls back what has already been achieved in realization of the Principles of Policy.

90. Another dimension is that Areas falling outside the jurisdiction of LDA are still being governed by the Local Governments. The residents of LMC are, therefore, materially disadvantaged and discriminated as their right to participate in the democratic process at the local level stands usurped, offending Article 25 of the Constitution.

91. The legislative competence of the provincial legislature is "subject to the Constitution under Articles 142 and 143. It is typically considered to be subject to two limitations. The first limitation is that no legislative action can violate fundamental rights and the second, that the legislature has the competence under the Constitution to make the law. Understanding of the legislative power by drawing these two limitations might not be correct. The legislative power under the Constitution (Articles 142 and 143) is to be exercised "[s]ubject to the Constitution or in other words subject to the other provisions or other constitutional values of the Constitution. Therefore, other than the two limitations, the remainder of the Constitution has to be considered. In this case, the remainder of the Constitution includes the constitutional values of Federalism, the guaranteed principles of political and social justice under the Objectives Resolution, the Principles of Policy under Articles 32 and 37(i), the mandate under Article 140A and the fundamental rights under Articles 9, 14, 17 and 25. Provincial Legislature while legislating will be fashioned by these constitutional

limitations. The legislative powers exercised under Article 140A (PLGA) advances the federal character of our Constitution and prevail over other provincial laws that comes in conflict with it.

92. Section 4(2) of PLGA provides that the local government shall not impede the executive power of the Provincial Government. Local Government System, while drawing its design and recognition from the constitution, draws its powers from the provincial legislature. The executive authority of the Local Government is punctuated by legislation. The executive authority of the provincial government, in the absence of any legislation, in any case, cannot extend to the affairs of the local government which operates under a legislative structure.

LDA Act, 1975

93. LDA Act, 1975 ("LDA Act) promulgated on 3-4-1975 provides for the constitution of Lahore Development Authority (LDA). The preamble to the LDA Act provides for the establishment of a comprehensive system of metropolitan planning and development in order to improve the quality of life in the area of Lahore Division, establish an integrated metropolitan and regional development approach and a continuing process of planning and development, to ensure optimal utilization of resources, economical and effective utilization of land and to evolve policies and programmes relating to the improvement of the environment of housing, industrial development, traffic, transportation health education, water supply, sewerage, drainage, solid waste disposal and matters connected therewith and incidental to. The Chief Minister, Punjab is the Chairman of the Authority [Section 4(3)] along with six elected representatives to be nominated by the Government, Chairman, Planning and Development Board of the Government, Secretary Finance, Secretary Housing, Urban Development and Public Health Engineering Department, Secretary Local Government and Community Development Department, Commissioner, two technical experts to be appointed by the Government, Director General and all Managing Directors.

94. Powers and functions of LDA (section 6) include the following:

"6. Powers and Functions of the Authority.---(1) Subject to the provisions of this Act and any rules framed thereunder, the Authority may exercise such powers and take such measures as may be necessary for carrying out the purposes of this Act.

(1) Without prejudice to the generality of the foregoing subsection, the Authority shall-

(i) Initiate and maintain a continuous of comprehensive development planning for the area with the objective of preparing [and implementing master plan];

(ii) Periodically update such ["master plan"] and coordinate its implementation by the Authority [and] other Government Agencies, within the Area;

(iii) Develop, operate and maintain water-supply, sewerage and drainage systems within the service area of the Water and Sanitation Agency to be established under Section 10 (2) of this Act.

(iv) Prepare Annual Development Prograrmme for the area, ensure compliance of the Annual Development Programme with priorities established in the "master plan after its preparation, and evaluate performance under the Annual Development Programme at the end of each year;

(v) Establish, maintain and periodically revise as necessary, planning, controls and building regulations for the area to--

(a) Provide appropriate urban design and pretext publish safety;

(b) Ensure compliance with the "master plan" after its preparation; and

(vi) Take all steps and measures necessary for the implementation and enforcement of the provisions of clauses (i) to (v) above.

(3) Without in any way restricting the scope of subsections (1) and (2), the Authority may--

(i) prepare, implement and enforce schemes for environmental improvements, housing, urban renewal including slum improvement and re-development, solid waste disposal, transportation and traffic, health and education facilities and preservation of objects or places of historical archaeological, scientific, cultural and recreation importance;

(ii) take any steps or adopt and measures for the fasce lifting and beautification of the area;

(iii) Acquire property both movable and immovable;

(iv) Sell, lease, exchange or otherwise dispose of or grant licence of concessions in respect of any property vested in it;

(v) Undertake any works and incur any expenditure;

(vi) Procure machinery, instruments or any other material required by it;

(vii) Enter into contracts;

(viii) Cause studies, surveys, experiments or technical researches to be made or contribute towards the cost of any such studies, surveys, experiments or technical researches, made by any other Agency;

(ix) Issue interim development orders for areas for which a scheme is under preparation and restrict or regulate by general or special order any change in the use of land alteration in building structures and installations;

(x) Cause removal of any works obstructing the execution of its schemes.

(xa) Construct, maintain, upgrade and exclusively charge toll on roads, bridges, flyovers, underpass or such other facilities within the areas, and grant concessions in respect thereof;

(xi) Seek and obtain advice and assistance for the preparation of any scheme, or for the execution of any scheme from any Government Agency or person, and such Agency or person shall give the advice and assistance sought by the Authority to the best of its ability, knowledge and judgment and the additional expenditure, if any, involved in giving such advice or assistance shall be borne by the Authority; and

(xii) Establish as many Agencies as it may consider necessary.

Majority of these functions relating to urban development stand devolved to the local government (LMC) under section 87 of the PLGA .

95. LDA can prepare "schemes" under the LDA Act (section 13). "Scheme means a project approved for urban development, redevelopment or renewal and includes larger area plan, areas specified and notified for specific use, traffic control plans, classification and reclassification plans, housing scheme or zoning scheme [section 3(w)]. The schemes are prepared and then executed by the LDA in the "Area, which means the Lahore Division [section 3(c)] subject to the approval of the Government. Section 13(5) specifically provides that a "Government Agency (which includes a local government [section 3(m)(ii)]) shall not prepare a planning or development scheme within the Area except with the concurrence of LDA. Similarly, LDA has the power to prepare housing, building infrastructure services, commercial and semi-commercial projects (section 13A) or to land use classification (section 14), make master plan (section 14A), or give direction to the local government to execute a scheme in consultation with the Authority, or take over and maintain any of the works and services in that area, to provide amenity in relation to the land which in the opinion of the authority ought to be provided and to enforce regulations on behalf of the Authority (section 15). General power to execute Schemes (section 16). LDA can declare any locality within an area to be controlled area and issue such directions for the prevention of haphazard growth or encroachments and unauthorized construction in such area (section 18). Power to remove sources of pollution (section 20). Imposition of betterment fee (sections 23 and 24). LDA enjoys the power to impose rates, fees, surcharges or other charges and fines (section 28). Extension of time and cancellation of approved schemes

(Sections 34A and 34B). Punishment for offences (section 35). Conversion of property to different use (section 38). LDA Act is to override other laws (section 46). All these powers usurp the responsibilities and authorities devolved to the local government under PLGA and offend the constitutional mandate of Article 140A.

96. For the above reasons, the powers and functions of LDA under sections 6, 13, 13A, 14, 15, 16, 18, 20, 23, 24, 28, 34A, 34B, 35, 38 and 46 of LDA Act, 1975 to the extent that they usurp, trump, encroach, dilute and abridge the powers, responsibility and authority devolved on to the elected representatives of the Local Government System under Article 140A through PLGA are therefore, declared ultra vires Articles 9, 14, 17 and 25 of the Constitution and further declared to be offensive to Articles 32, 37(i) and 140A of the Constitution.

97. LDA, however, does continue to be a development authority of the Provincial Government for the assistance of the Provincial Government but it cannot assume jurisdiction or interfere in the political, administrative and financial powers devolved on to the local government through PLGA under Article 140A. It matters less if LDA Act has undergone amendment after the promulgation of PLGA. The constitutional mandate to devolve and establish a local government system, once devolved, cannot be usurped through subsequent collateral legislation. The Provincial Legislature has the power to alter or withdraw the devolved powers subject to the principles of subsidiarity and federalism discussed above but till then the said powers are protected under the vertical separation of powers introduced by Article 140A of the Constitution and no provincial or federal legislation can impair or impede the political, administrative and financial responsibility and authority of the elected representatives of the Local Government. 98. The Local Government is free to enter into an agreement with LDA to execute projects within the limits of the local government as provided in section 19 of the LDA Act. Therefore, in case the newly elected local governments feels technically incapacitated they may reach out to engage LDA to carry out urban development in the area but not vice versa.

99. The argument that the political representatives have yet not been elected and the local governments have not come into existence is absolutely immaterial. The constitutional mandate to establish local government system through devolution is loud and clear. PLGA with clearly devolved political, administrative and financial powers is on the statute book. The Constitution or PLGA does not give a future timeline for the enforcement or implementation or formation of the local governments. The current delay in the elections is purely political and in violation of the law. The recent order passed by the august Supreme Court of Pakistan[83] in this regard is self-explanatory. Therefore, delay in holding the elections does in no manner undo devolution or by any mechanism revert power from the local governments into the hands of the Provincial Government or its statutory authorities. Elections are a consequence and not the

source of devolution. Article 140A is the source and design of devolution and the provincial legislation actualizes this constitutional mandate. Delay in elections simply delays the exercise of this devolved power but cannot permit it to be exercised by another authority in the meanwhile. The failure to hold local government elections and the absence of municipal services for the benefit of the public is the sole responsibility of the executive, who have, thus far, poorly failed to discharge this Constitutional responsibility.

Transition

100. We are aware that elections to the local government have been scheduled in September, 2015. We are also aware that local government elections have not been held for the last several years. Therefore, till such time the local government system is functionalized by its elected representatives, LDA may continue with its day-to-day repair and maintenance work within its area of jurisdiction and complete all the pending projects. List of the said projects, in spite of our direction was not placed on the record by LDA. As the Signal Free Corridor Project has not commenced in terms of section 12 of PEPA and the EIA has already been set aside by this Court, proceedings with the said Project by the respondent LDA would be in violation of Article 140A of the Constitution. Therefore, the initiation of the said Project by respondent LDA is also struck down as being unconstitutional. Respondent LDA may propose the establishment of the Project to the elected local government system and it is up to the elected Local Government to approve the same in accordance with law.

Accountability of the officers

100A. It is noticed with concern that the LDA proceeded with the Project at the cost of causing loss to the public exchequer and inconvenience to the residents of Lahore. EPA also failed to take action against LDA for unlawfully allowing the construction to continue without obtaining the environmental approval. We have been informed that Rs 60 million, of taxpayers' money, has been spent so far, till the Project was stopped through an interim order passed by this Court in W.P. No.5323/2015. These administrative excesses need to be checked and delinquent officers held accountable or else these grave lapses and blatant lawlessness will continue without remorse and regret. We, therefore, direct the National Accountability Bureau (NAB) to initiate an inquiry against the DG, LDA and the DG, EPA for failing to comply with the law and to account for the loss of public money to the tune of Rs.60 million. National Accountability Bureau shall submit its Report within two months with the Registrar of this Court. In case the Report is not filed, this case will be put up for hearing on the judicial side for necessary orders.

101. These are detailed reasons for the Short Order announced in open court on 17-4-2015 and is reproduced in Schedule-I for reference.

102. For the above reasons this petition along with petitions listed in Schedule-II are allowed.

(Syed Mansoor Ali Shah)

Judge

(Mrs. Ayesha A. Malik) (Muhammad Yawar Ali)

Judge Judge

SCHEDULE-I

"Subject to the main judgment to be released later, we are issuing the following short order. It is qualified that this short order in no manner limits the scope of the main judgment which may discuss other aspects of the case and include directions and orders which are not reflected in this short order:

i. The Local Government System has been fully recognized as the third tier of Government by the Constitution under Article 140A of the Constitution of the Islamic Republic of Pakistan, 1973. Elected Local Government System at the grass root level is pivotal for a strong and robust democracy and actualizes the constitutional vision.

ii. The constitutional mandate of an elected Local Government System cannot be diluted or encroached upon. Therefore, the provisions of Lahore Development Authority Act, 1975 (to be spelled out in detail in the main judgment) to the extent that they are in conflict with the powers and functions assigned to the Local Government System or in any manner assume powers and function devolved to the Local Government, in this case, Lahore Metropolitan Corporation, under the Punjab Local Government Act, 2013 are declared to be unconstitutional and ultra vires Article 140A and the concomitant fundamental rights of the people.

iii. As a consequence thereof, the powers and functions of LDA shall always remain subject to Article 140A and Punjab Local Government Act, 2013.

iv. Till such time that the Local Government elections are held, which are scheduled for September, 2015, LDA will only attend to its existing on-going projects and the day-to-day work regarding repair and maintenance but shall not embark upon any new project which encroaches upon the powers of an elected Local Government System under the Punjab Local Government Act, 2013.

v. The approval of Environmental Impact Assessment ("EIA") for the construction phase of the Signal Free Corridor Project ("Project")

granted by the Director General, Environmental Protection Agency ("EPA"), Punjab dated 19-3-2015 is declared to be without lawful authority.

vi. Considering that the Project has not commenced in terms of Section 12 of Punjab Environmental Protection Act, 1997, the said Project, if at all, can only be initiated after seeking permission/approval from the concerned elected Local Government System, as and when it is formed.

vii. LDA and its contractor are directed to remove all the construction equipment and construction works from the site of the Project forthwith and restore the roads to its original position in the best possible manner.

viii. The concerned Officers of LDA and the EPA/EPD shall be held personally accountable for allowing the Project to be mobilized on the site, causing traffic disturbance to the public, without first obtaining the approval of the EIA as mandated under section 12 of PEPA.

(Syed Mansoor Ali Shah)

Judge

(Mrs.Ayesha A. Malik) (Muhammad Yawar Ali)

Judge Judge

SCHEDULE-II

S.No. Writ Petition
1. W.P. No.5323/2015
2. W.P. No.8008/2015

(Syed Mansoor Ali Shah)

Judge

(Mrs. Ayesha A. Malik) (Muhammad Yawar Ali)

Judge Judge

MWA/I-19/L Petitions allowed.

Case:5 Ms. Shehla Zia And Others---Petitioners

P L D 1994 Supreme Court 693

Present: Nasim Hasan Shah, CJ.,

Saleem Akhtar and Manzoor Hussain Sial JJ

Ms. SHEHLA ZIA and others---Petitioners

versus

WAPDA---Respondent

Human Rights Case No.15-K of 1992, heard on 12th February, 1994.

(Environmental pollution---Installation of Grid Station/cutting of trees).

Dr. Parvez Hasan for Petitioners.

Tariq Malik, Project Director, WAPDA for Respondent.

Date of hearing: 12th February, 1994,

ORDER

SALEEM AKHTAR, J.--- Four residents of Street No. 35, F-6/1, Islamabad protested to WAPDA against construction of a grid station in F-6/1, Islamabad. A letter to this effect was written to the Chairman on 15-1-1992 conveying the complaint and apprehensions of the residents of the area in respect of construction of a grid station allegedly located in the green-belt of a residential locality. They pointed out that the electromagnetic field by the presence of the high voltage transmission lines at the grid station would pose a serious health hazard to the residents of the area particularly the children, the infirm and the Dhobi-ghat families that live in the immediate vicinity. The presence of electrical installations and transmission lines would also be highly dangerous to the citizens rarticularly the children who play outside in the area. It would damage the greenbelt and affect the environment. It was also alleged that it violates the principles of planning in Islamabad where the green belts are considered an essential component of the city for environmental and aesthetic reasons. They also referred to the various attempts made by them from July 1991 protesting about the construction of the grid station, but no satisfactory step has been taken. This letter was sent to this Court by Dr. Tariq Banuri of LUCN for consideration as a human rights case raising two questions; namely, whether any Government agency has a right to endanger the life of citizens by its actions without the tatter's consent; and secondly, whether zoning laws vest rights in citizens which cannot be withdrawn or altered without the citizens' consent. Considering the gravity of the matter which may involve and affect

the life and health of the citizens at large, notice was issued to the respondents who appeared and explained that the site of grid station was not designated as open space/green area as stated in the layout pan of the area. It was further stated that the site has been earmarked in an incidental space which was previously left unutilized along the bank of nallah and was not designated as open space or green area. It is about 6-10 feet in depression from the houses located in the vicinity of the grid station site. The grid station site starts at least 40 feet away from the residences in the area and construction of grid station does not obstruct the view of the residents. It was further stated that the fear of health hazard due to vicinity of high voltage of 132 K.V. transmission lines and grid station is totally unfounded. Similar 132 KV grid stations have been established in the densely populated area of Rawalpindi, Lahore, Multan and Faisalabad, but no such health hazard has been reported. It was also claimed that not a single complaint has been received even from the people working in these grid stations and living right in the premises of the grid stations. The installations are made in such a way that the safety of personnel and property is ensured. It was further stated that electromagnetic effects of extra high voltage lines of voltage above 5000 KV on the human and animal lives and vegetation is under study in the developed countries, but the reports of results of such studies are controversial. In support of the contentions, CDA submitted extract from the opinion of Dr. M. Mohsin Mubarak, Director, Health Services, which reads as follows:---

"The fears of the residents about the effects of high voltage transmission lines are also not considered dangerous for the nearby residents. Even a small electric point with 220 volts current or a Sui Gas installation in the kitchen can prove to be extremely dangerous if specific precautions are not undertaken and maintained. The high tension wires are not likely to harm the residents if due protection criteria are properly planned and executed. The concept of dangerous and offensive trades and civil defence is not that the candle should not be lit. A candle must be lit to remove darkness and make the things

more productive but care must also be taken not to let the candle burn every thing around."

The comments of Government of Pakistan, Ministry of Water and Power recommending the construction of grid station were also filed in which the following points were noted on the effect of electrical light and' wiring on health of human beings:---

"('c) Although the studies of effects of electric lines and wiring on the health of human beings are being carried out by different agencies/institutions of the world, there are no established and conclusive findings about any serious effects of electric lines/wiring on the health of human beings.

(d) The effects of electricity can be considered on account of its two fields namely the electric field and the magnetic field and in this regard, extracts of sectionS.11 and 8.13 of Transmission Line Reference Book of Electric Power Research Institute, California, USA on Biological Effects of Electric and Magnetic fields on people and animals are enclosed which indicate that there is no restriction on permissible duration of working if the electric field intensity is up to SKV/m whereas in the case under consideration the elect .field intensity would certainly be lesser than O.KV/m which value as indicated in the said extract is for a location at a distance of 20m from a 525 KV Line.

The nearest present live conductor is of only 132 KV and that too would be at a distance of more than 20m from the nearest house's boundary wall as shown in the enclosed map. This clearly shows that the nearby houses fall in a quite safe zone. As regards the magnetic fields, the intensity of the magnetic field at ground ~ level close to transmission line !varies from 0.1 to 0.5 gauss which values are less than those in industrial environments especially in proximity to low voltage conductors carrying currents as mentioned in the above extracts. In view of the above details, there should be no concern about the health of residents of nearby houses.

(e) The apprehension that the grid station would generate and transmit excessive heat to houses is unfounded as the main equipment i.e. power transformers are properly cooled by circulation of oil inside transformer tanks and by means of cooling fans."

These opinions of the WAPDA and CDA are based on Transmission lines. Reference Book, 345 KV and above/2nd Edition, extract of which had been filed and relevant parts of which are reproduced as follows:---

"Although health complaints by substation workers in the USSR were reported (40.41), medical examination of linemen in the USA (38.39), in Sweden (19) and in Canada (56.58), failed to find health problems ascribable to electric fields. As a result of unclear findings and research in progress, no rules for electric-field intensity inside and outside the transmission corridor have been universally established. In some cases, design rules have been established to allow construction of EHV transmission lines to proceed with the maximum possible guaranteed protection of people from possible health risks.

Many studies of magnetic-field effects on laboratory items have been performed. A good general review and discussion offered by Sheppard and Eisenbud (59). Magnetic fields have been reported to affect blood composition, growth, behaviour, mune systems and neural functions. However, at present there is a lack of conclusive evidence, and a very confusing picture results from the wide variation in field strengths, frequency, exposure durations used in different studies."

WAPDA also submitted extracts from A.B.B. literature regarding insulation and coordination/standard clearances data based on LEC specification in 'which 'minimum clearance for 500 KV equipment and installation has been given 1,100 ft. and 1,300 ft. for phase-to-phase air clearance and phase-to phase earth air clearance.

2. The petitioners were also asked to furnish material in support of their claim. They have filed news clippings from magazines, research articles, and opinions of scientists to show that electromagnetic radiation is the wave produced by magnetism of any electrical current and thus electromagnetic fields can affect human beings. The first item is a clipping from the magazine The News International, September 18; 1991, entitled `Technotalk'. It refers to a book `Electropollution -- How to protect yourself against it' by Roger Coghill. It has. been observed that "now researchers are asking whether it is more than coincidence that the increase in diseases like cancer, ME, multiple selerosis, hyperactivity in children, allergies and even AIDS have occurred alongside enormous growth in the production and use of electricity". It further states that "the first warning sign came from the USA in 1979 when Dr. Nancy Wertheimer and Dr.Ed Leeper found that children .living next to overhead electricity lines were * more likely to develop leukaemia. Since then, further studies have shown links with brain tumours, depression and suicide".

One US researcher found that electrical utility workers were 13 times more likely to develop brain tumour. than the rest of the pollution. A midlands doctor discovered a higher than average rate of depression and suicide in people living near electric power cables.

Photo copy of an article published in Newsweek, July 10,1989, entitled `An Electromagnetic Storm' has been filed. In this article the apprehensions **and problems** *considered by the* scientists have been discussed and reference has been made to the researches in this field in which, finally it was concluded as follows:-- '

"'The question is whether we know enough to embark on a complete overhaul of the electronic environment. Avoiding electric blankets and sitting at arm's length from one's VDT screen (their fields fall off sharply after about two feet) seem only prudent. But drastic steps to reduce people's involuntary exposures might prove futile. For while research clearly demonstrates that electromagnetic fields .can affect such process as bone growth, communication among brain cells, even the activity of white blood cells, it also shows that weak fields

sometimes have greater effects than strong ones. Only through painstaking study will anyone begins to know where the real danger

lies. On one point, at least, Brodeur and many of those he criticizes seem to agree: we're not quite sure what we're up against, and we need urgently to find out."

3. An article published in the magazine `Nature', Volume 349, 14 February 1991 entitled `EMF - Cancer Link Still Murky' refers to a study made by epidemiologist John Peters from the University of Southern California, who released his preliminary results from a case control study of 232 young leukemia victims. The results implied that leukemia reasons are co-related to electromagnetic field (EMF) exposure and that they are not dependent on how exposure is estimated.

4. In an article from Electronics World & Wireless World,

February 1990 entitled `Killing Fields', the author has discussed and produced a large number of case studies from which it was observed that at least there was two-fold increase in adult leukaemia link to fields from wires near human beings. It was further observed that if one accepts a casual link to power line electromagnetic fields asmuch as 10-15% of all childhood cancer cases might be attributed to such fields. There has been a growing concern and research in the US and seven American States have adopted rights of way, but no such step has been taken in UK. The case studies also showed that:--

"Among recent residential studies, GP Dr. Stephen Perry published correlations between the magnetic-field exposure of people living in multi- storey blocks (of nine storeys or more). Wolverhampton with the incidence of heart disease and depression. Magnetic field strengths measured in all 43 blocks with a single rising cable showed very significantly higher readings (p 0.0002) in those apartments categorized as `near' the cable, averaging 0.315 T (highest: 0.377 T) against 0.161 T (lowest: 0.148 T) in the `distant' apartments. In line

with these measure; significantly more ` ..... myocardial infraction,

hypertension, isshaemic heart disease and depression...: was reported

in those living near the cable:'

Other articles in the same magazine were entitled `Killing Fields, the Epidemiological Evidence" and "Killing Fields, the Politics" in which suggestion was made that "until results of this research become available more Corium should be placed on all new buildings or routing of power lines which causes 50 Hz fields in houses to exceed every cautiously set limit".

In an information sent by Mark Chernaik, Environmental Law US to Brig. (Rtd.) Muhammad Yasin, Projects Coordinator, Sustainable Development Policy Institute (SDPI), it is stated that "when electric current passes through high voltage transmission lines (HVTLs), it produces electric and magnetic fields. Although both can affect biological systems, the greatest concern is the health impacts of

magnetic fields. A magnetic field can be either static or fluctuating Magnetic field from HVTLs fluctuates because the electric currents within HVLTs are alternating currents (AC) which reverse direction 50 to 60 times per second (50 to 60 Hz). Magnetic fields pass nearly unimpeded through building materials and earth". It refers to four recent epidemiological studies which show that the people exposed to relatively strong static and fluctuating magnetic fields have higher rates of leukaemia as compared to general population. It gives the figures that the rate of leukaemia was higher in over 1,70,000 children who lived within 300 meters HVTLs in Sweden from 1960-85. Children who were exposed to fluctuating magnetic

,fields greater than 0.20 Ut were 2.7 times more likely to have contracted leukaemia and children who were exposed to greater than 0.3 Ut were 3.08 times more likely to have contracted leukemia than other children (Reference: Feychting, M. & Anlbon. A (October 1993) Magnetic Fields and Cancer in Children Residing in Swedish Higher Voltage Power Lines" - American Journal of Epidemiology, Vo1.138, p.467). It also refers to an article "Childhood Cancer in Relation to Modified Residential Wire Code Environmental Health Perspectives, Vo1.101, pp.76-80 in which studies were carried out in respect of cancer in children living in the Denver area of US and it was reported that children living in homes within 20 meters of HVTLs or primary distribution lines were 1.9 times more likely to have contracted cancer in general and 2.8 times more likely to have contracted leukaemia in particular than children living in homes with relatively moderate or low exposure to magnetic fields. Likewise reference has been made to the study relating to leukaemia in workers who maintain and repair telephone lines in US and the rate of cancer'in Norweigian electrical workers who were exposed to magnetic fields. It also states that power company challenged the existence of link between leukaemia and exposure to magnetic fields on the basis that there is no biological mechanism which can explain the link. It has been stated that "there is a plausible (but still unproven) biological explanation for the link between leukaemia and exposure to magnetic fields". It also suggests methods to reduce magnetic fields from HVTLs.

5. Dr. Tariq Banwi has also made a statement and given his opinion as an expert on Environmental Economics and a student of Social Management. According to him:--

"(a) The earlier consensus on the limited degree of the harmful effects of radiation does not exist. While at this point the expert evidence is not conclusive, regarding its impact the burden of proof has shifted from individuals to the organisation . As a result, Courts in the US have recommended more stringent safety standards.

(b) Given the absence of proper safeguards and standards in Pakistan's research, it is unlikely that studies done in Pakistan would help decide the issue. Perforce, we would have to rely on the results of cross country studies, or on those of studies conducted in industrialized countries. We should not. regard the results in other

countries as inappropriate for our purposes. These are the only results we are likely to be able to use in the foreseeable future.

(c) Even in the latter countries, until such time as the matter gets resolved, the profession is likely to place greater weight on the critical and more recent studies than would be warranted by their frequency or number. In other words, a single study showing additional harmful consequences has more weight, than hundreds of studies that argue that there is no change:"

According to him precautionary principles should be adopted and there should be a balance in existing situation, developments and the environmental hazards.

6. The petitioners have also relied on an article entitled "Regulatory and Judicial Responses to the Possibility of Biological Hazards from Electromagnetic Fields generated by Power Lines" by Sherry Young, Assistant Professor of Law, Claude W. Pettit, College of Law Ohio Northern University, BA. Michingan State University, Haward Law School published in Villanora Law Review, Vol. 36, p. 129 in 1991. It is an exhaustive and informative article which deals with the current state of knowledge about the biological effect of exposure to electromagnetic fields, the responses of the legal system to the possibility of biological hazards, evaluations and the proposals for regulatory response. It refers to various studies made in USA, Sweden and Canada about ELF exposure and cancer in children and adults. After referring to the various studies arid the results arrived at the author has summed up as follows:-

"While the implications of these studies justify additional research, it would be both difficult and futile to base any significant regulation of electric transmission and distribution systems on rather limited data currently available. At best, various experiments have demonstrated that particular cells or animals have shown particular responses to exposure to ELF fields of particular frequencies and intensities for specific duration. The mechanism by which those effects occur are not known. It is also unknown whether the changes that have been observed are in fact harmful to the organisms involved, whether they would be harmful if they occurred in humans, or whether exposure to ELF fields results in numerous biological effects that in fact cancels each other out. Additionally, it is unknown whether humans or other animals are able to adapt to exposure, either immediately or after some threshold period of adjustment. It is known that in some of the experiments demonstrating biological effects, the effects disappeared upon increased, as well as decreased, exposure. Therefore, it is impossible to conclude that any given level of exposure will be harmless, no matter how precisely its frequency, intensity and duration are regulated, nor can it be established that any given level of exposure is definitely harmful. Consequently, it is impossible at this time to prescribe alternations in electric transmission and distribution systems that are likely to significantly reduce the risks, if any, of exposure to ELF fields.

At present, the scientific evidence regarding the possibility of adverse biological effects from exposure to power-frequency fields, as ***well*** as **the** possibility of . reducing or eliminating such effects, is inconclusive. The remaining question is how the legal system, including both the judiciary and the various regulatory agencies, should respond to this scientific uncertainty."

The research project known as the New York Power Line Projects (HYPLP) was established to investigate independently and without any bias on several projects particularly for considering the implication of Wythmer and Leeper study which suggested association between proximity to power lines and childhood leukaemia. The author has summarised the conclusion of this project as follows:--

"The panel concluded that they **had documented** biological effects of electric and magnetic fields and that several of those findings were worthy of further consideration because of their possible implications for human health. The panel was not able, however, to identify any adverse health effects. Although the replication of the Wyrthemer and Leeper study basically confirmed the study's finding of an association between power line configurations and childhood cancer, the panel was unable to offer any recommendation based on this and other epidemiological studies because of methodological difficulties with quantifying magnetic field exposure levels and the lack of any established casual relationship between weak magnetic fields and cancer." Finally the panel recommended further research in the following areas: (1) The possible association between cancer and exposure to magnetic fields. and effects of exposure on learning

ability. (2) The possible existence of thresholds for biological effects; and (3) methods of power delivery for use that would reduce magnetic fields."

After this report staff task farce was appointed by the Chairman of the New York Public Service Commission to evaluate the report of IYL'LP and develop recommendations for consideration by it. The task forte noted that "the researchers had not determined whether the effects that had been established would persist at lower field intensities or whether there was threshold flow/ whiff the effects disappeared." "Nonetheless the task force found that the results were disturbing enough to require additional epidemiological studies preferably in New York." The recommendations made by N Y P L P were endorsed by the task force.

7. Dr. Mirza Arshad Ali Baig who was at that time Director-Genera: of planning and Development and Industrialization of Pakistan Council of Scientific and Industrial Research to a query made by Dr. Tariq Banuri has given his opinion as follows:-- '

"The information that is so far available, with me suggests that transmission lines give rise to magnetic fields which have extremely

high intensity compared with naturally occurring fields. This is particularly the case with sources operating at power frequencies of 50 or 60 Hz were magnetic fields of very high magnitude compared with the natural are common. Any one near the transmission lines is, therefore, exposed to excessive magnetic field.. Magnetic fields give rise to induced electric fields and currents which in turn interact with the blood flow as well as living tissues. Such issues which are vulnerable to electrical excitation e.g. visio-sensory stimulation that generate magneto-phosphenes are likely to be affected on long term exposure and under high intensity of the field. So far there is no direct evidence of effects of exposure to magnetic fields but there are indications that an excess in the incidence of cancer among children and adults is associated with very weak (0.1 to 1m T) 50 or 60 Kg magnetic flux densities such as those directly under high tension wires, welding acres, induction heaters and a number of *home appliances*. The ill-effects have just started surfacing up because of availability of some health facilities and institutions where ailments of many kind are being reported In Pakistan these effects may easily be attributed to anything other than scientific. Instead of waiting for abnormal cues to 1e reported in our situation it is perhaps imperative that we go for sustainable development and discourage installation of transmission lines over the residential areas anywhere"

The opinion of Dr. Mohammed Hanif, Officer Incharge, Environmental Research and Pollution Control Section of Pakistan Council of Scientific and Industrial Research, Lahore dated 10-7-1991, after referring to various studies and research made in USA, concluded as follows:--

"According to my conclusion, I draw from the literature so far read by me, there is going to be proved ill-health effects on human beings associated especially with the high voltage transmission. However, for a while setting aside the question of the ill-health effects, of high energy concentrated electrical waves, there remains a constant concern about the safety factor. The high structures especially to be installed for the transmission of electricity and the high voltage current passing though these transmission -lines continue to pose constant danger to the people and the property of the area under their direct hit in case, these structures collapse due to any cause."

A documented research paper entitled Electromagnetic (EH) Radiation-- A Threat to Human Health, by Brig. (Rtd.) Muhammad Yasin of Sustain Development Policy Institute has also been relied upon by the petitioners. The author has referred to some reported research conclusions as follows:--

"(i) The risk of dying from acute myliod leukaemia is increased by 2.6 if you work in electrical occupation especially if you are a telecommunication engineer or radio amature.

(ii) Service personnel exposed to non- ionising radiation are seven times more than the unexposed colleagues likely to develop cancer

of the blood forming organs and lymphatic tissues and are likely to develop thyroid tumours.

(iii) 10 to 15 per cent. of all childhood cancer cases might be attributable for power frequency fields found in homes (23/115 V 50 - 60 Hz). The risk of childhood cancer more than double in homes where the average 60 Hz magnetic field is over 300 MT."

He has also referred to studies in Sweden on effect of high tension power lines on the health of children and detected higher risk of leukaemia. This study also indicated that prolonged exposure to electromagnetic fields has links of leukaemia in adults. His conclusion and recommendations are to create awareness, to adopt safety standards prescribed by developed countries and undertake studies and research.

8. From the aforestated material produced on record which contains uptodate studies and research it seems that so far no definite conclusions have been drawn by the scientists and scholars, but the trend is in support of the fact that there may be likelihood of adverse effects of electromagnetic fields on human health. It is for this reason that in all the developed countries special 8 care is being taken to establish organizations for carrying on further research on the subject. The studies are, therefore, not certain, but internationally there seems to be a consensus that the lurking danger which in an indefinite manner has been found in individual incidents and studies cannot be ignored. **WAPDA** on the other hand insists on executing the plan which according to it is completely safe and risk free. The material placed by WAPDA is based on studies carried out two decades back. The other statement is based on their personal observation of their workers who are working in grid stations and further that from the locality no, such complaint has been made as in the present case. The research and opinion relied upon by WAPDA is not the latest one nor from authentic sources because they are merely relying upon old opinions. In the present-day controversies where every day new avenues are opened new researches are made and new progress is being reported in the electrical fields, it would be advisable for WAPDA to employ better resources and personnel engaged in research and study to keep themselves uptodate in scientific and technical knowledge and adopt all such measures which are C necessary for safety from adverse effect of magnetic and electric fields. On the other hand the materials placed by the petitioners are the latest researches carried out to examine the magnetic fields `effect on health and also about the possible dangers that may be caused to human beings. In the absence of any definite conclusion that electromagnetic fields do not cause childhood leukaemia and adult cancer and in the presence of studies the subject requires further research and the conclusions drawn earlier in favour of the power company are doubtful-safest course seems to be to adopt a method by which danger, if any, may be avoided. At this stage it is not possible to give a definite

finding on the claims of either side. There is a state of uncertainty and in such a situation the authorities should observe the rules of prudence and precaution. The rule of prudence is to adopt such measures which may avert the so-called danger, if it occurs. The rule of precautionary policy is to first consider the welfare and safety of the human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safety. To stick to a particular plan on the basis of old studies or inconclusive research cannot be said to he a policy of prudence and precaution. There are instances in American Studies that the power authorities have been asked to alter and mould their programme and planning in such a way that the intensity and the velocity is kept at the lowest level. It is highly technical subject upon which the Court would not like to give a definite finding particularly when the experts and the technical evidence produced is inconclusive. In these circumstances the balance should be struck between the rights of the citizens and also the plans which are executed by the power authorities for welfare, economic progress and prosperity of the country. ' 1

9. Dr. Parvez Hasan, learned counsel for the petitioners contended that the Rio Declaration on Environment and Development has recommended the precautionary approach contained in principle No. 15, which reads as follows:--

"Principle 15_--1n order to protect the environment_ precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

" The concern for protecting environment was first internationally recognised when the declaration of United Nations Conference on the Human Environment was adopted at the Stockholm on 16-6-1972. Thereafter it had taken two decades to create awareness and. consensus among the countries when in 1992 Rio Declaration was adopted. Pakistan is a signatory to this declaration and according to Dr. Perwaiz Hasan although it has not been ratified or enacted, the principle so adopted has its own sanctity and it should be implemented, if not in letter, at least in spirit. An international agreement' between the nations if signed by any country is always subject to ratification, but it can be enforced as a law only when legislation is made by the country through its legislature. Without framing ~a law in terms of the international agreement the covenants of such agreement cannot be implemented as a law nor do they bind down any party. This is the legal position of such documents, but the fact remains that they have a persuasive value and command respect.'

The Rio Declaration is the product of hectic discussion among the leaders of the nations of the world and it was after negotiations

between the developed and the developing countries that an almost consensus declaration had been sorted out. Environment is an international problem having no frontiers creating transboundary effects. In this field every nation has to cooperate and contribute and for this reason the Rio Declaration would serve as a great binding force and to create discipline among the nations while dealing with environmental problems. Coming back to the present subject, it would not be out of place to mention that Principle No. 15 envisages rule of precaution and prudence. According to it if there are threats of serious damage, effective measures should be taken to control it and it should not be postponed merely on the ground that scientific research and studies are uncertain and not conclusive. It enshrines the principle that prevention is better than cure. It is a cautious approach to avert a catastrophe at the earliest stage. Pakistan is a developing country. It cannot afford the researches and studies made in developed countries on scientific problems particularly the subject at hand. However, the researches and their conclusions with reference to specific cases are available, the information and knowledge is at hand and we should take benefit out of it. In this background if we consider the problem faced by us in this case, it seems reasonable to take preventive and precautionary measures straightaway instead of maintaining status quo because there is no conclusive

fording on the effect of electromagnetic fields on human life. One should not wait for conclusive finding as it may take ages to ford it out and, therefore, measures should be taken to avert any possible danger and for that reason one should not go to scrap the entire scheme but could eke such adjustments,

alterations or additions which may ensure safety and security or at least minimise the possible hazards.

10. The issue raised in this petition involves the welfare and safety of the citizens at large because the network of high tension wires is spread throughout the country. One cannot ignore that energy is essential for present-day life, industry, commerce and day-to-day affairs. The more energy is produced and distributed, the more progress.-and economic development become possible. Therefore, a method should be devised to strike balance between economic progress and prosperity and to minimise possible hazards. In fact a policy of sustainable development should be adopted. It will thus require a deep study ~ into the planning and the methods adopted by WAPDA for construction of the grid station. The studies in USA referred to above have suggested that certain modes can be adopted by which high tension frequency can be decreased. This is purely scientific approach which has to be dealt with and decided by the technical and scientific persons involved in it. It is for this reason that both the parties have agreed that NESPAK should be appointed as a Commissioner to ' examine the plan and the proposals/schemes of WAPDA in the light of the complaint made by the petitioners and submit its report and if necessary to suggest any alteration or addition which may be economically possible for

constructing a grid station. The location should also be examined and report submitted at the earliest possible time.

11. At this stage it may be pointed out that in all the developed countries great importance has been given to energy production. Our need is greater as it is bound to affect our economic development, but in the quest of economic development one has to adopt such measures which may not create hazards to life, destroy the environment and pollute the atmosphere. From the comments filed by.WAPDA it seems that they in consultation with the Ministry of Water and Power have prepared a plan for constructing grid station for distribution of power. While making such a plan, no public hearing is given to the citizens nor any opportunity is afforded to the residents who are likely to be affected by the high tension wires running near their locality. It is only a one-sided affair with the Authority which prepares and executes its plan. Although WAPDA and the Government may have been keeping in mind the likely dangers to the citizens health and property, no due importance is given to seek opinion or objections from the residents of the locality where the grid station is constructed or from where the high tension wires run. In USA Public Service Commission has been appointed for the purpose of regulating and formulating the plans and permission for establishing a grid station. It hears objections and decides them before giving permission to construct such a power station. No such procedure has been adopted in our country. Being a developing country we will need many such grid stations and lines for transmission of power. It would, therefore, be proper for the Government to establish an Authority or Commission manned by internationally known and recognised scientists having no bias and prejudice to be members of such Commission whose opinion or permission should be obtained before any new grid station is allowed to be constructed. Such Commission should also examine the existing grid stations and the distribution lines from the point of view of health hazards and ~ ~ environmental pollution. If such a step is taken by the Government in time,

much of the problem in future can be avoided.

12. The learned counsel for the respondent has raised the objection that the facts of the, case do not justify intervention under Article 184 of the Constitution. The main thrust was that the grid station and the transmission line are being constructed after a proper study of the problem taking into consideration the risk factors, the economic factors and also necessity and requirement in a particular area. It is after due, consideration that planning is made and is being executed according to rules. After taking such steps possibility of health hazards is ruled out and there is no question of affecting property and health of a number of citizens nor any fundamental right is violated which may warrant interference under Article 184. So far the first part of the contention regarding health hazards is concerned, sufficient discussion has been made in the earlier part of the judgment and need not be repeated. So far the fundamental rights are concerned, one has not to go too far to find the reply.

Article 9 of the Constitution provides that no person shall be derived of life or liberty save in accordance with law. The word `life' is very significant as it covers all facts of human existence. The word `life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any K act of omission or commission of a third person in the neighbourhood or at a far off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the, possibility of danger come forward and this has happened so in the present case.

13. According to Oxford dictionary, `life' meant state of all functional activity and continual change peculiar to organised matter and specially to the portion of it constituting an animal or plant before death and animate existence."

In Black's Law Dictionary, `life' means "that state of animals, humans, and plants or of an organised being, in which its natural functions and motions are performed, or in which its organs are capable of performing their functions. The interval between birth and death. The sum :of the forces by

which death is resisted ..... "Life" protected by the Federal Constitution includes all personal rights and their enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home. and bring up children, freedom of worship, conscience; contract, occupation, speech, assembly and press".

The Constitutional Law in America provides an extensive and wide meaning to the word `life' **which includes all such** rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish

home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law. In the present case this is the complaint the petitioners have made. In our view the word `life' constitutionally is so wide that the danger and encroachment complained of would impinge fundamental right of a citizen. In this view of the matter the petition is maintainable.

14. Dr. Pervez Hasan, learned counsel has referred to various judgments of the Indian Supreme Court in which the term `life' has been explained with reference to public interest litigation. In Kharak Singh v. State of UP (ASR 1963 SC 129 for interpreting the word `life' used in Article 21 of the Indian Constitution reliance was placed on the judgment of Field, J. in Munn v. Ilinois (1876) 94 US 113 at page 142 where it was observed that `life' means not merely the right to the continuance of a person's animal existence but a right to the possession of each of his organs --his arms and legs etc." In Francis Corgi v. Union Territory of Delhi (AIR 1981 SC 746) Bhagvati, J. observed that right to life includes right to live with human dignity and all that goes alongwith it, namely, the bare necessaries of life such as adequate nuition, clothing and shelter and facilities for reading and writing in diverse from". Same view has been expressed in Olga Tellis and others v. Bombay Municipal Corporation (AIR 1986 SC 180) and State of Himachal Pradesh and another v. Umed Ram Sharma and others (AIR 1986 SC 847). In the first case right to life under the

Constitution was held to mean right to livelihood. In the latter case ' the definition has been extended to include the "quality of life' and not mere physical existence. It was observed that "for residents of hilly areas, access to road is access to life itself. Thus, apart from the wide meaning given by US Courts, the Indian Supreme Court seems to give a wider meaning which includes the quality of life, adequate nutrition, clothing and shelter and cannot be restricted merely to physical existence. The word `life' in the 'Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. Under our Constitution, Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right to `life' under Article 9 and if both are read together, question will, arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, .health care, clean atmosphere and unpolluted environment. Such questions will arise for consideration which can

be dilated upon in more detail in a proper proceeding involving such specific questions.

15. Dr. Pervaz Hasan has also referred to several judgments of the Indian Supreme Court in which issues relating to environment and ecological balance were raised and relief was granted as the industrial activity causing pollution had degraded the quality of life. In Rural Litigation & Entitlement Kendra and others v. State of UP and others (AIR 1985 SC 652) mining operation carried out through blasting was stopped and directions were issued to regulate it. The same case came up for further consideration and concern was shown for the preservation and protection of environment and ecology. However, considering the defence need and for earning foreign exchange some queries were allowed to be operated in a limited manner subject to strict control and regulations. These judgments are reported in AIR 1987 SC 359 and 2426 and AIR 1988 SC 2187 and AIR 1989 SC 594. In Shri Sachidanand Pandey and another v. The State of West Bengal and others (AIR 19$7 SC 1109) part of land of zoological garden was given to Taj Group of Hotels to build a five-star hotel. This transaction was challenged in the High Court without success. The appeal was dismissed. Taking note of the fact that society's interaction with nature is so extensive that "environmental question has assumed proportion affecting all humanity", it was observed that:--

"Obviously, if the Government is alive to the various considerations requiring thought and . deliberation and as arrived at a conscious decision after taking them into account, it may not be for this Court to v . r ~ interfere in the absence of mala fides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public." '

In M.C. Mehta v. Union of India (AIR 1988 SC 1115) and M.C. Mehta v. Union of India (AIR 1988 SC 1037) the Court on petition filed by a citizen taking note of the fact that the municipal sewage and industrial effluents from tanneries were being thrown in River Ganges whereby it was completely polluted, the tanneries were closed down. These judgments go a long way to show that in cases where life of citizens is degraded, the quality of life is adversely affected and health hazards are created affecting a large number of people, the Court in exercise of its jurisdiction under Article ~~ 184(3) of the Constitution may grant relief to the extent, of stopping the functioning of factories which create pollution and environmental degradation.

16. In the problem at hand the likelihood of any hazard to life by magnetic field effect cannot be ignored. At the same time the need for constructing grid stations which are necessary for industrial and economic development cannot be lost sight of. From the material produced by the parties it seems that while planning and deciding to construct the gird station WAPDA and the Government Department acted in a routine manner without taking into consideration the

latest research and planning in the field nor any thought seems to have been given to the hazards it may cause to human health. In these circumstances, before passing any final order, with the consent of both the parties we appoint NESPAK as Commissioner to examine and study the scheme, planning, device and technique employed by WAPDA and report whether there is any likelihood of any hazard or adverse effect on health of the residents ,of the locality. NESPAK may also suggest variation in the plan for minimizing the alleged danger. WAPDA shall submit all the plans, scheme and relevant information to NESPAK. The petitioners will be at liberty to send NESPAK necessary documents and material as they desire these documents should reach NESPAK within two weeks. NESPAK is E authorised to call for such documents or information from WAPDA and the petitioners which in their opinion is necessary to complete their report. The report should be submitted ~ within four weeks from the receipt of the order after which further proceeding shall be taken. WAPDA is further directed that in future prior to installing or constructing any grid station and/or transmission line, they would issue public notice in newspapers, radio and television inviting objections and to finalise the plan after considering the objections, if any, by affording public hearing to the persons filing objections. This, procedure shall be adopted and continued by WAPDA till such time the Government constitutes any commission or authority as suggested above.

M.BA./S-869/S Order accordingly,

Case 6: D. G. Khan Cement Company Ltd.---Petitioner

2021 S C M R 834

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik andSyed Mansoor Ali Shah, JJ

D. G. KHAN CEMENT COMPANY LTD.---Petitioner

Versus

GOVERNMENT OF PUNJAB through Chief Secretary,Lahore and others--Respondents C.P. 1290-L/2019, decided on 15th April, 2021.

(Against the Order of Lahore High Court, Lahore dated 31.01.2019, passed in W.P. No. 5898/2019)

Date of hearing: 11th February, 2021.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The case stems from Notification dated 08.03.2018 ("Notification") issued by the Industries, Commerce and Investment Department, Government of the Punjab ("Government"), under sections 3 and 11 of the Punjab Industries (Control on Establishment and Enlargement) Ordinance, 1963 ("Ordinance"), introducing amendments in Notification dated 17.09.2002 to the effect that establishment of new cement plants, and enlargement and expansion of existing cement plants shall not be allowed in the "Negative Area" falling within the Districts Chakwal and Khushab.

2. The petitioner owns and runs a cement manufacturing plant in Kahoon Valley in the Salt Range at Khairpur, District Chakwal and feels wronged of the Notification for the reasons, viz. (i) the Provincial Government and its line Department lacked jurisdiction to issue the Notification and only Local Government under the Punjab Local Government Act, 2013 ("Act") could exercise jurisdiction over matters relating to zoning and classification of land, land use, environment control, water sources and ecological balances; (ii) the respondents without a detailed scientific study about underground water levels acted with undue haste in issuing the Notification; (iii) the petitioner was not given the opportunity of hearing under section 3 of the Ordinance read with Articles 4, 9, 10A, 18 and 25 of the Constitution of the Islamic Republic of Pakistan ("Constitution"); (iv) the petitioner's right to freedom of trade, business and profession under Article 18 of the Constitution was infringed; and (v) the actions of the respondents unreasonably discriminated between the petitioner and other cement manufacturers similarly placed on the basis of materials and information that could not be termed as

reasonable or intelligible differentia thereby violating Article 25 of the Constitution.

3. We consider in this case if the Government's decision of issuing the Notification lacks statutory authority or if factual grounding of the Notification compromises its legal validity.

Legality of declaring an area as a "Negative Area" under the Ordinance

4. We first turn to the question whether the Provincial Government can declare an area to be a "Negative Area" under the Ordinance. "Negative Area" under the Notification is where no new cement plant can be set up and no enlargement or enhancement of an existing cement plant can be allowed. The preamble to the Ordinance provides for organized and planned growth of industries in the Province. Organized and planned industrial growth is unquestionably in the public interest and is effectively regulated through section 3 of the Ordinance. No person can establish an industrial undertaking or enlarge any existing industrial undertaking except with the prior permission of the Provincial Government. Generally, such permission can be granted or refused only after extending an opportunity to the applicant to show cause against it. The discretion of the Government to permit the setting up or enlargement of an industrial undertaking under section 3 is structured according to the conditions spelled out in section 3(b) of the Ordinance. Section 3(a) deals with the permission for establishing or enlarging an industrial undertaking in an area as a greenfield project, which is being examined by the Government for the first time. However, section 3(b) refers to the area where the Government has already satisfied itself on the basis of the information available to it and after making such inquiry as to whether the industrial undertaking to be established or enlarged is prejudicial to national interest, or injurious to health of the residents of the local area in which the industrial undertaking is proposed to be set up or enlarged, or is a source of nuisance for the residents of the local area in which the industrial undertaking is proposed to be set up or enlarged and may declare such an area to be either positive or negative area or zone as the case may be. "Planning" is a comprehensive, coordinated and continuing process that involves identification of future goals, development of plans to achieve those goals, and devising of mechanism to give effect to those plans with a view to promoting the common good of the society.[2] Zoning of the Province into positive and negative areas is a means towards achieving organized and planned industrial growth without impinging on the social, environmental, ecological, civic and economic interests of the locals. Zoning divides land into distinct geographical areas and imposes restrictions with respect to use of land in each area. These regulatory controls allow or disallow use of land in a particular geographical zone. Therefore, any application requesting permission to establish or enlarge an industrial undertaking under section 3 of the Ordinance in an area that is already marked as a zone (negative or positive) is decided

accordingly. The organization and planning under the Ordinance is, therefore, in effect, actualized on the basis of the parameters mentioned under section 3(b) of the Ordinance.

5. Further, the socioeconomic concerns critical for organized and planned development existing in the year 1963[3] have since multiplied and become more complex as the population has swelled from approximately 48 million in 1963 to more than 217 million in 2019.[4] Organized and planned growth in the world today would undoubtedly mean "sustainable development[5]" and the terms prejudicial to national interest, injurious to health and source of nuisance would naturally encompass the pressing issues of the time i.e., climate change; environmental degradation; food and health safety; air pollution; water pollution; noise pollution; soil erosion; natural disasters; and desertification and flooding having an appreciable impact on public health, food safety, natural resource conservation, environmental protection, social equity, social choice, etc. The authority to regulate land use, introduce zones or negative or positive areas, has been recognized as the police power of the state, asserted for public welfare.[6] The legislative policy of organized and planned growth, under the Ordinance, also synchronizes well with our constitutional values, set out in the preamble of the Constitution, as well as the Fundamental Rights and the Principles of Policy, in particular, the right to life and dignity,[7] promotion of social and economic wellbeing of the people[8] and safeguarding the legitimate interest of backward and depressed classes[9].

6. We deem it necessary to observe that zoning of areas into positive and negative is not absolute. The ban under the Notification is not etched in stone but may be lifted if the Government is of the view that the valley, in this specific case, stands recharged with water and nature has become resilient to allow sustainable development. Organization and planning of future growth cannot be frozen in time and is never intended to be static. Zoning allows the flexibility needed to respond to change. The choices that govern a particular territorial zoning may not hold good indefinitely. Land use patterns change giving rise to opportunities to revise earlier standards as zoning measures are introduced in public interest.[10] The value of zoning lies in the flexibility by which it is administered to react to new social and economic situations.[11] We, therefore, hold that zoning of areas for the purposes of the Ordinance is not absolute but is subject to change provided such change is necessitated by new circumstances. Hence, the prohibition under the Notification not to establish or enlarge an industrial undertaking in a negative area is not absolute.

7. Insofar as the objection of the petitioner that the mandate of zoning of land belongs to the local government is concerned, suffice it to say that the matter involved a trans-district issue which could be dealt with by the Provincial Government exercising the authority conferred by the Ordinance. Even so, the functions of the local government could not mean to trump the executive authority of the Provincial Government.[12] The Ordinance is a special law compared

to the Act and therefore takes preference. Furthermore, under section 4 of the Act, local governments have to function within the provincial framework and are to faithfully observe the federal and provincial laws. And in the performance of their functions, the local governments shall not impede or prejudice the exercise of the executive authority of the Provincial Government. Even otherwise, nothing has been brought on the record that shows that the concerned districts have taken a contrary position or are aggrieved of the Notification.

8. Also, the petitioner claimed that its right to freedom of trade, business and profession guaranteed under Article 18 of the Constitution was infringed and the actions of the respondents unreasonably discriminated between the petitioner and other cement manufacturers. We are, however, of the view that the rights granted under Article 18 of the Constitution are "subject to such qualifications" that have been "prescribed by law". The Ordinance forbids the setting up of any industrial undertaking except by the prior written permission of the Government. Placing an embargo on establishment and expansion of cement plants in the Negative Area to provide for organized and planned growth of industries in the Province in line with the objectives of the Ordinance does not offend Article 18 of the Constitution.[13] Moving on, the decision to impose a ban on the establishment and expansion of cement plants was not taken to benefit or punish anyone but to ensure the organized and planned growth of industry in the Province in view of the findings of a multidisciplinary study (discussed later) which provided reasonable basis for zoning of project area without violating Article 25 of the Constitution.[14]

Factual foundation of the "Negative Area"

9. The next question is whether the Notification was issued in public interest in line with the objectives of the Ordinance or not. In 2016, the Secretary, Mines and Minerals Department informed the Provincial Government that existing cement plants in the Salt Range were causing ecological harm to the area. In this backdrop, the Government decided to inquire into the matter and solicit expert advice. A study was commissioned for determining the suitability of the project area for cement plants comprising Districts of Chakwal, Jhelum, Khushab and Mianwali of Punjab. Messrs. NESPAK and Messrs Sogreah ("Consultants") were engaged for the purpose. The project team included foreign experts such as Cement Plant Expert, Environmental Chemist and Geologist having experience of working in a range of countries in different regions of the world.[15] The methodology of the study reflects that following determinants were identified to be the criteria for suggesting proposals concerning delineation of the negative and positive zones for the establishment of new and expansion of existing cement plants:

i. sufficiency of cement raw materials;

ii. sustainable water resources;

iii. environmental conditions of the project area;

iv. socio-economic conditions;

v. transportation infrastructure; and

vi. agriculture, forest, restricted and sensitive sites.

The Consultants undertook a fairly comprehensive exercise covering a range of factors likely to be impacted by the establishment or expansion of cement plants in the project area. They verified deposits, determined their quality and estimated their resource potential to decide the issue of sufficiency of cement raw materials; carried out water resource study by examining ground and surface water resources; and studied air emissions, ambient noise, and ground, surface and waste water. They also conducted surveys to examine socioeconomic conditions of the area and made estimation of the existing traffic volume through manual classified count surveys, capacity analysis of existing road network, estimation of generated traffic due to new facilities and traffic projections based on relevant socioeconomic indicators and past data. Technical audit of existing cement plants was conducted. Forest, agricultural and wildlife reserve areas/sanctuaries were taken into consideration. Field visits were conducted and ecological features of the area were studied. A meeting of the Consultants with the representatives of the cement plants and the Government officials was also held.

10. The Consultants found that groundwater table had gone down at an average of 64 feet at various locations, shallow wells (open/dug wells) had been found dried up and, therefore, further installation of new cement plants/expansion of existing cement plants could cause further depletion of groundwater resulting in greater problems for the local people and especially for agriculture. They were of the view that four valleys i.e. Kahoon, Vinhaar, Pail and Padhrar having important scenic and touristic value needed to be protected. Additionally, these valleys contain forest areas, settlements and agriculture lands. It is underlined that total population of the area was recorded as 4.8 million in 2017 and around 1,23,753 in the Negative Area alone. The study showed that any new cement plant or expansion of any existing cement plant would require new road infrastructure or improvement in the capacity of the existing road infrastructure. A negative zone covering an area of 979 sq km (11% of the total area) with an embargo on establishment of new and expansion of existing cement plants was thus delineated out of a total of 8,872 sq km. It was also proposed that demarcation of negative zones be reviewed after every ten years on the basis of technical assessment.

11. The Provincial Cabinet in view of the said recommendations of the Consultants took a number of decisions including declaration of "Negative Area" comprising 979 sq km of land in the Salt Range out of a total area of 8,872 sq km where establishment of new and expansion of existing cement plants was completely banned. It is

underlined that the Positive Area adjoins the Negative Area and can be accessed by the petitioner for future development subject to the regulatory approvals under the law. It was also decided that the existing cement plants falling within the Negative Area would be allowed to operate only if they were fully compliant with all legal, technical and environmental standards prescribed by the Government and after a final approval was given by the Government to this effect. The Notification was thus issued and establishment of new and expansion of existing cement plants was banned in the Negative Area. The Government concluded that permitting the establishment of new and expansion of existing cement plants would be prejudicial to public interest.

12. It is hardly a secret that water situation in the project area is far from satisfactory. In November 2017, this Court had taken notice of the reports of drying up of the fabled Katas Raj Temple Pond. Cement companies situated in the vicinity of the pond were found pumping huge quantities of water free of charge and without having any regard for the environmental impact of such unbridled extraction on the aquifer as well as surrounding areas.[16] This Court in Katas Raj case had observed that the issue of scarcity of water in the area was becoming acute adversely affecting the environment and lives of the people living nearby.[17] The cement companies were directed to switch to alternative sources of water and bring their dependence on groundwater to zero within six months.[18] The cement plants, subsequently, claimed to have brought the use of groundwater to zero though the feeding channels of Katas Raj Temple Pond could not become functional and, therefore, the Director General ("DG"), Environmental Protection Agency ("EPA") Punjab was directed to constitute a "Team of Experts" from all concerned departments for technical survey of the area to discover the reasons behind the issue.[19] The "Interim Report" dated 11.06.2020 submitted by the DG, EPA Punjab did not convey a satisfactory picture: "14 % (of groundwater in the valley) is abstracted by cement industry"; "Katas Raj Temple' (sic) pond is located downhill whereas the Bestway Cement Factory was installed at (sic) uphill 03 km away from the pond, thus the latter intervention may influence the groundwater flow path recharging holy pond"; and "over abstraction appears so far to be the main cause of drying out of pond." Here, we are reminded of the Consultants' recommendation that use of existing tube wells within the boundary of existing cement plants, even after shifting to alternative sustainable water sources, must be monitored to ensure that cement plants are not abstracting groundwater.

13. The Assistant Director (Environment) Chakwal during the pendency of this case carried out site inspection of the petitioner's cement plant on 09.02.2021. His report reveals that there are also other issues besides water. He reported that blasting and quarrying of raw materials caused dust pollution in the locality causing environmental damage; quarrying also threatened the local ecology of biodiversity rich area of Kallar Kahar; deforestation and erosion

resulted from quarrying; heavy transport and machinery used for transporting raw material affected the locals of the area negatively; quarrying sites deteriorated the aesthetic appeal of the area; and air emissions from the cement industry was a cause of air pollution in the area.

14. The only objection raised by the petitioner to the report of the Consultants relates to the finding about underground water levels. However, the petitioner loses sight of the fact that sustainability of water resources was not the sole factor leading to designation of the Negative Area. Rather, the Consultants carried out a multidisciplinary study of the project area to determine suitability of land for establishment and expansion of cement plants. Fixated on the issue of groundwater levels, the petitioner engaged private consultants "to prepare a factual report on the status of ground water in and around the plant area." Without going into the qualification of the consultants hired by the petitioner and the scope of the inquiry undertaken by them, we believe, it is not our job to referee battles among experts.[20] The Government has discretion to rely on reasonable opinions of its own qualified experts in case of conflicting specialist views.[21] Another aspect is the integration of science in planning and regulation. The courts while reviewing scientific and technical determinations generally exhibit deference to institutional competence because of the specialized nature of the subject matter.[22] There is a risk that the courts will unravel layers of careful scientific work as a result of their combined ignorance and judicial second-guessing while reviewing science-based regulatory decisions.[23] However, scientific complexity does not provide excuse to evade judicial scrutiny as it needs to be ensured that Government does not transgress its mandate or does not mangle scientific results to produce certain outcomes.[24] Judicial oversight of specialized administrative decision-making is necessary to obviate the possibility of capture and incompetence.[25] Accordingly, we keep ourselves restricted to the rationality of the Government's decision.[26]

15. It was vehemently argued by the learned counsel for the petitioner, that the petitioner company proposes to expand the existing cement plant by installing a new "zero water" technology cement plant. However, there is no evidence brought on the record to establish the claim that the new cement plant technology is 'zero-water' or even the fact that the petitioner is currently manufacturing cement without any use of water. Even the consultants engaged by the petitioner did not say that cement plants could be run without using water. On the contrary, according to the position taken by the petitioner and confirmed by the DG, EPA, Punjab, the petitioner is currently using six rainwater harvesting ponds and two water tanks to save water for use in the cement plant. This act of building storage tanks and ponds shows that water is essential for the running of the cement plant, not to mention that development of the ponds and storage tanks further restricts the recharge and replenishment rate of the aquifer which is to sustain the local habitat including nature, population, subsistence agriculture and

help in regaining water supply levels for Katas Raj Temple Pond. We also notice that building such ponds and storage tanks (a water management project) required an Initial Environmental Examination (IEE)/Environment Impact Assessment (EIA), which does not appear to have been done, casting doubts on legal sustainability of these ponds and storage tanks in the Negative Area. Recourse to alternative source of water by the petitioner company clearly establishes that use of water is an indispensible requirement for running a cement plant. Additionally, the petitioner claimed that it was not given the opportunity of hearing before the issuance of the Notification. We, however, see that the Consultants had arranged a Stakeholders Consultation Meeting with cement companies. Three officials of the petitioner participated in the said meeting and their names and signatures are visible in the report. Besides, we need to look beyond limestone, clay and other minerals to appreciate the value of the stretch of land, called the Salt Range, whose charm has captivated pilgrims, travelers and emperors since olden days. The picturesque region rich in biodiversity, and historical and sociocultural heritage is a national asset of timeless magnificence.

Precautionary Principle, In Dubio Pro Natura and Environmental Legal Personhood

16. The facts of the case brought before us through various technical reports of the Government and its consultants (referred to above) show that there are serious threats to environment in the Negative Area, especially to the underground water aquifer that needs to be first recharged before any sustainable development in the area can take place. Negative area in other words means an environmentally fragile area, which is a vulnerable natural habitat and needs care and protection, till it recovers, if at all. Enlargement of an existing cement plant in a negative area attracts the well-established principle of international environmental law called the Precautionary Principle, reflected in Principle 10 of the Rio Declaration, 1992. The principle provides; "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." Another emerging environmental principle declared as Principle 5 of the IUCN World Declaration on the Environmental Rule of Law (2016) is in dubio pro natura i.e. "in cases of doubt, all matters before courts, administrative agencies, and other decision-makers shall be resolved in a way most likely to favour the protection and conservation of the environment, with preference to be given to alternatives that are least harmful to the environment. Actions shall not be undertaken when their potential adverse impacts on the environment are disproportionate or excessive in relation to the benefits derived therefrom." In the facts of the case, the Provincial Government was obliged to take a precautionary approach and act in-line with the principle of in dubio pro natura, till, inter alia, a detailed hydrogeological study assessing the potential of groundwater resources for industrial purposes of the project area is carried out.

This approach is also constitutionally compliant as the courts are to protect the fundamental rights of the public and in this case right to life, sustainability and dignity of the community surrounding the project remains paramount till such time that the Government is of the view that the project has no adverse environmental effects. Also, the environment needs to be protected in its own right. There is more to protecting nature than a human centered rights regime. We see elements of personhood have now been ascribed to nature by legislatures and courts around the world.[27] The approach of personifying the environment in order to protect and preserve nature and its objects is one of the latest evolutions in environmental law.[28] Man and his environment each need to compromise for the better of both and this peaceful co-existence requires that the law treats environmental objects as holders of legal rights.[29]

Water Justice

17. According to our National Climate Change Policy, 2012 water resources are inextricably linked with climate; this is why the projected climate change has such serious implications for Pakistan's water resources. Freshwater resources in Pakistan are based on snow and glacier-melt and monsoon rains, both highly sensitive to climate change. This will further exacerbate the already difficult situation of a water-stressed country facing demand increases due to population growth and increasing economic activity. To address the impact of climate change on water resources and to enhance water security, the Government of Pakistan has proposed Integrated Water Resource Management to provide regulatory frameworks, water licensing, slow action dams, artificial recharge especially for threatened aquifers, adoption of integrated water resource management concepts, and ensuring rational ground water exploitation by avoiding excessive pumping. Agriculture is central to human survival and is probably the human enterprise most vulnerable to climate change. The hydrological cycle is similarly likely to be influenced by global warming, necessitating the agriculture and livestock sectors, particularly in rain-fed areas, to adapt to climate change. The World Water Forum, laying down the concept of water justice, declared[30] that the State should exercise stewardship over all water resources, and protect them, in conjunction with their associated ecological functions, for the benefit of current and future generations, and the Earth community of life.[31] Because of the close interlinkages between land and water and the ecological functions of water resources, any person with a right or interest to use water resources or land has a duty to maintain the ecological functions and integrity of water resources and related ecosystems.[32] The precautionary principle should be applied in the resolution of water-related disputes. Notwithstanding scientific uncertainty or complexity regarding the existence or extent of risks of serious or irreversible harm to water, human health or the environment, judges should uphold or order the taking of the necessary protective measures having regard to the best available scientific evidence.[33] Consistent with the principle in dubio pro

natura, in case of uncertainty, water and environmental controversies before the courts should be resolved, and the applicable laws interpreted, in a way most likely to protect and conserve water resources and related ecosystems.[34] In adjudicating water and water-related cases, judges should be mindful of the essential and inseparable connection that water has with the environment and land uses, and should avoid adjudicating those cases in isolation or as merely a sectoral matter concerning only water.[35] Water justice requires appreciation that there are no easy, simple or singular solutions to the water crisis, and that water problems cannot be resolved through technical solutions alone but require broader recognition that they are inherently ecological, political and social issues simultaneously.[36]

Climate Change and Climate Justice

18. The fragility of the Negative Area also needs to be examined in the larger context of climate change. The environmental issues initially brought to our courts were local geographical issues, be it air pollution, urban planning, water scarcity, deforestation or noise pollution. But now climate change has a bearing on these issues.[37] One of the serious climate change threats to Pakistan is the rising temperatures resulting in enhanced heat and water-stressed conditions, particularly in arid and semi-arid regions, leading to reduced agricultural productivity.[38] Notably, the Salt Range has an arid climate characterized by lack of water.[39] According to our National Climate Change Policy, 2012 for Pakistan to continue on a development path, the more immediate and pressing task is to prepare itself for adaptation to climate change. The country is bearing huge socioeconomic costs of environmental degradation, it is globally ranked in the top ten countries most affected by climate change in the past 20 years and has lost 0.53 percent per unit GDP, suffered economic losses worth US$ 3792.52 million and witnessed 152 extreme weather events from 1999 to 2018.[40] Only by devising and implementing appropriate adaptation measures will it be possible to ensure water, food and energy security for the country. The goal of the Policy is to ensure that climate change is mainstreamed in the economically and socially vulnerable sectors of the economy and to steer Pakistan towards climate resilient development. The Notification, in the current facts of the case, is a climate resilient measure and in step with the National Climate Change Policy and the Constitution.

19. Another important dimension of climate change is intergenerational justice and the need for climate democracy. The tragedy is that tomorrow's generations aren't here to challenge this pillaging of their inheritance. The great silent majority of future generations is rendered powerless and needs a voice. This Court should be mindful that its decisions also adjudicate upon the rights of the future generations of this country. It is important to question ourselves; how will the future generations look back on us and what legacy we leave for them?[41] This Court and the Courts around the globe have a role to play in reducing the effects of climate change for

our generation and for the generations to come. Through our pen and jurisprudential fiat, we need to decolonize our future generations from the wrath of climate change, by upholding climate justice at all times. Democracy, anywhere in the world is pillared on the rule of law, which substantially means rights based rule of law rather than rule based; which guarantees fundamental values of morality, justice, and human rights, with a proper balance between these and other needs of the society.[42] Post climate change, democracies have to be redesigned and restructured to become more climate resilient and the fundamental principle of rule of law has to recognize the urgent need to combat climate change. Robust democracies need to be climate democracies in order to save the world and our further generations from being colonized at the hands of climate change. The premabular constitutional value of democracy under our Constitution is in effect climate democracy, if we wish to actualize our Constitution and the fundamental rights guaranteed under the Constitution for ourselves and our future generations. Janine Benyus[43] suggests we learn from nature's 3.8 billion years of evolution. How is it that other species have learned to survive and thrive for 10,000 generations or more? Well, it's by taking care of the place that would take care of their offspring, by living within the ecosystem in which they are embedded, by knowing not to foul the nest. We must restore and repair and care for the planetary home that will take care of our offspring. For our children, and our children's children, and all those yet to come, we must love our rivers and mountains and reconnect with the long and life-giving cycles of nature.[44] To us there is no conflict between environmental protection and development because our answer would be sustainable development. Sustainable development means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs[45] and it is in step with our constitutional values of social and economic justice.

20. As a result, all contentions raised by the petitioner are rejected. We hold that the Notification dated 08.03.2018 is in accordance with the provisions of the Ordinance and negative area can be planned and designed banning industrial activity within its bounds. The Petitioner company is not allowed to enlarge or enhance the capacity of its existing cement plant till such time that the Negative Area subsists. In these circumstances, we uphold the Notification. The High Court has rightly refrained from interfering into the matter. Consequently, the leave is refused and the petition is dismissed.

MWA/D-7/SC Petition dismissed

Case: 7 Mian Muhammad Asif---Petitioner

P L D 2020 Lahore 137

Before Tariq Saleem Sheikh and Safdar Ahmad Naeem, JJ

Mian MUHAMMAD ASIF---Petitioner

Versus

SUPERINTENDENT OF POLICE and others---Respodents

Writ Petition No.45138 of 2019, decided on 10th October, 2019.

Date of hearing: 2nd August, 2019.

JUDGMENT

TARIQ SALEEM SHEIKH, J.--The Petitioner has set up a brick kiln at Kasur Road By-pass near Raiwind (District Lahore) and is doing business under the name and style of Ch. Pervaiz Bricks Company. According to him, he has converted it to Zigzag technology which is environment friendly. He has purchased a piece of land near Raja Jang, District Kasur, from which he digs the earth and transports it to his kiln for use as raw material for making bricks. His grievance is that the SHO, Police Station City Raiwind (Respondent No.3), has unlawfully stopped transportation of earth to his brick kiln which has brought his business to a halt. Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), he prays that a writ of prohibition be issued against Respondent No.3 restraining him from interfering in his lawful business.

2. This Court summoned Respondent No.3 who submitted that the impugned action had been taken on the instructions of the Deputy Director, Mines and Minerals, Lahore Region, and placed on record copies of his letters dated 12.6.2019 and 13.6.2019 which he had addressed to him in this regard. Keeping in view the sensitivity of the issue involved, this Court issued notices to the Government of the Punjab, the Deputy Director, Mines and Minerals, Lahore Region, the Environment Protection Department and the Human Rights Department of the Province. It also appointed Mr. Sheraz Zaka, Advocate, as amicus curiae.

3. The learned counsel for the Petitioner, Mr. Fiaz Ahmad Ranjha, Advocate, contended that the Petitioner was engaged in a lawful business and was using soil from his own land for manufacturing of bricks which was neither prohibited by any law currently in force nor required any licence under the Punjab Mining Concession Rules, 2002 (the "Rules"). He further contended that the other brick kiln

owners were using the same raw material but no action had been taken against them and only the Petitioner had been singled out. He maintained that the action of Respondent No.3 smacked of malice and was violative of the fundamental rights guaranteed to him under Articles 4, 18, 24 and 25 of the Constitution.

4. On the other hand, the learned Assistant Advocate General submitted that under Section 49 of the Punjab Land Revenue Act, 1967, all mines and minerals, irrespective of the fact whether the land was owned by the government or a private individual, were the property of the government and their excavation was regulated by law. He maintained that the Petitioner was excavating and transporting Bhassar/Ghassar for manufacturing of bricks which was a "minor mineral" within the meaning of clause (xxiv) of Rule 2. Since he was not holding valid licence/lease therefor, the impugned action of Respondent No.3 was justified and this petition was liable to be dismissed.

5. Mr. Irfan Nazir, Director General, Environmental Protection Agency (EPA), assisted by Mr. Muhammad Nawaz Manik, Director (Law), agreed with the learned Assistant Advocate General that excavation of Bhassar/Ghassar required mining lease under Part-IV of the Rules. However, he added that the EPA had no issue with the Petitioner at present inasmuch as he had converted to Zigzag technology to control carbon emissions as per directions of the Hon'ble Supreme Court of Pakistan.

6. Barrister Saeed Nasir conceded that soil was not covered by the definition of "minor minerals" given in the Rules. Nevertheless, he submitted that it was the basic/primary unit of ecosystem which was essential for growing crops, conservation of biodiversity, combating desertification and degradation of land and, last but not least, controlling climate change. He further submitted that according to the studies of the World Bank and other international agencies Pakistan's renewable and non-renewable natural resources were depleting fast which was threatening her food security. He added that soil, more particularly the land's topsoil, was a valuable natural resource. We should take immediate measures to conserve it and regulate its excavation and use.

7. Mr. Sheraz Zaka, Advocate, the learned amicus curiae, submitted that in Pakistan bricks are primarily produced from brick earth which normally consists of 60-70% silica sand and 30-40% clay. The brick earth is mined from the surface of the earth and is collected at a point, mixed with water, moulded into the desired shape and then dried and fired. According to him, the question as to what were the constituents of the brick earth that the Petitioner was excavating and transporting to his kiln and whether it was a minor mineral as defined in the Rules and thus required licensing and control could not be determined without factual inquiry. Inasmuch as this Court could not undertake such inquiry in these proceedings, this petition was not maintainable and the Petitioner should be directed to avail alternate remedy provided by law.

8. Arguments heard. Record perused.

9. Section 49 of the Punjab Land Revenue Act, 1967, makes a clear distinction between land and minerals. The land can be owned by the government or a private individual or a juristic body but all mines and minerals therein always belong to the government and are its property. It stipulates:

49. Rights of Government in mines and minerals.-- Notwithstanding anything to the contrary in any other law, or in any order or decree of court or other authority, or in any rule of custom or usage, or in any contract, instrument, deed or other document, all mines and minerals shall be and shall always be deemed to have been the property of Government, and Government shall have all powers necessary for the proper enjoyment of its rights thereto.

10. In foreign jurisdictions as well similar laws have been enacted but the legislatures generally avoid a comprehensive definition of the term "mineral". In this view of the matter, courts have held that it has a contextual connotation and has no fixed meaning. In Glasgow Corporation v. Farie [(1888) 13 AC 657], Lord Halsbury, L.C. said:

"There is no doubt that more accurate scientific investigation of the substances of the earth and different modes of extracting them have contributed to render the sense of the word "mineral' less certain than when it originally was used in relation to mining operations. I should think that there could be no doubt that the word 'minerals' in old times meant the substances got by mining, and I think mining in old times meant subterranean excavation. I doubt whether in the present state of the authorities it is accurate to say that in every deed or in every statute the word 'minerals' has acquired a meaning of its own independently of any question as to the manner in which the minerals themselves are gotten."

11. The House of Lords in North British Railway Co. v. Budhill Coal and Sandstone Co. [1910 AC 116 (HL)] was concerned with the question whether sandstone or freestone is included in the minerals excepted by Section 70 of the Railways Clauses Consolidation (Scotland) Act of 1845. Lord Loreburn, L.C. considered a number of decisions, including the one mentioned above, and observed:

"It is not possible to extract any uniform standard. The same is true of the opinions expressed by different learned Judges. A variety of tests have been propounded, which are discussed by Lord Gorell. I agree with him both in his enumeration and in his criticism. Is the substance in common parlance a mineral? Is it so considered by geologists? Is it a substance of any peculiar value? No one principle has been accepted, and every principle appears to have its friends."

12. In Northern Pacific Railway Co. v. John A. Soderberg [188 US 526 (23. S.Ct 365, 47 L. Ed. 575) (1903)], Supreme Court of the United States ruled:

"The word 'mineral' is used in so many senses, dependent upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case. Thus, the scientific division of all matter into the animal, vegetable, or mineral kingdom would be absurd as applied to a grant of lands, since all lands belong to the mineral kingdom, and therefore could not be excepted from the grant without being destructive or it. Upon the other hand, a definition which would confine it to the precious metals 'gold and silver' would so limit its application as to destroy at once half the value of the exception. Equally subversive of the grant would be the definition of minerals found in the Century Dictionary as: 'any constituent of the earth's crust;' and that of Bainbridge on Mines: 'All the substances that now form, or which once formed, a part of the solid body of the earth.' Nor do we approximate much more closely to the meaning of the word by treating minerals as substances which are 'mined', as distinguished from those which are 'quarried', since many valuable deposits of gold, copper, iron, and coal lie upon or near the surface of the earth, and some of the most valuable building stone, such, for instance, as the Caen stone in France, is excavated from mines running far beneath the surface. This distinction between underground mines and open workings was expressly repudiated in Midland Railway Co. v. Haunchwood Brick and Tile Co., (1882) 20 Ch Div 552 and in Hext v. Gill, (1872) 7 Ch APP 699 : (1881-73) All England Reporter Rep 388.

13. In Bhagwan Dass v. State of U.P. and others [(1976) 3 SCC 784], it was argued that since sand and gravel were deposited on the surface of the land they could not be called minerals. Repelling the contention Y.V . Chandrachud, J. wrote:

"...It is in the first place wrong to assume that mines and minerals must always be sub-soil and that there can be no minerals on the surface of the earth. Such an assumption is contrary to informed experience. In any case, the definition of 'mining operations' and 'minor minerals' in Section 3(d) and (e) of the Act of 1957 and Rules 2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of 'winning' any minor mineral. 'Winning' does not imply a hazardous or perilous activity. The word simply means 'extracting a mineral' and is used generally to indicate any activity by which a mineral is secured. 'Extracting' in turn, means, drawing out or obtaining. A tooth is 'extracted' as much as is fruit juice and as much as a mineral. Only that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral."

The above view was reiterated in Banarsi Dass Chadha and Bros. v. Lt. Governor, Delhi Admn. [(1978) 4 SCC 11], and V.P. Pithupitchai v. Govt. of T.N. [(2003) 9 SCC 534] and Som Datt Builders Limited v. Union of India [(2010) 1 SCC 311].

14. In Punjab, the Regulation of Mines and Oil-fields and Mineral Development (Government Control) Act, 1948 (XX IV of 1948), and the Punjab Mining Concession Rules, 2002 (the "Rules"), are

relevant to the issue under discussion. Clause (xxvi) of Rule 2 defines the term "mineral" as:

"mineral" means all surface and sub-surface natural deposits of ores and metals and other metallic and non-metallic substances, including naturally occurring aqueous solutions containing more than 1% mineral salt in solution, but does not include -

(i) nuclear substances;

(ii) mineral oil; and

(iii) natural gas;

15. The Rules, however, make a distinction between (major) minerals and minor minerals. Clause (xxiv) of Rule 2 defines the latter as under:

(xxiv) "minor minerals" means ordinary sand, sand stone, silt stone, slate stone and gravel and may include any other mineral so declared by the Government,

On the other hand, "ordinary sand" is defined in clause (xxxi) of Rule 2 as follows:

(xxxi) "ordinary sand" means fluviatile deposit of minute fragments resulting from wearing down of pre-dominantly siliceous rocks mainly ranging from 5 microns to 2 millimeters in size including clays and silty sand containing more than 30% sand particles commonly known as "Bhassar/Ghassar" but does not include silica sand suitable for glass making.

16. In Muhammad Iqbal Khan and others v. Collector, Mansehra and others (PLD 2004 SC 659), the Hon'ble Supreme Court of Pakistan while considering somewhat similar definitions in the North-West Frontier Province (Minor Minerals) Mining Concession Rules, 1971 (which were also framed under Act XXIV of 1948, ibid) held that it was "abundantly clear" that minor minerals constituted a distinct category and were altogether different from the minerals.

17. While we are still on the definitions we need to note that Rule 2 names only some of the minerals that are to be reckoned as "minor minerals" and authorizes the Government to add to that list. Clay and silty sand (when it contains more than 30% sand particles commonly known as Bassar/Ghassar but excluding silica sand suitable for glass making) are covered by the said definition. However, brick earth has neither been declared a minor mineral by the legislature nor by the Government under its delegated authority. It is distinguishable from clay and silty sand and none of them should be considered as a sub-set thereof. Clay is a soft, loose, earthy material with a grain size of less than four micrometers. It forms as a result of weathering and erosion of rocks containing the mineral group feldspar over vast spans of time. During weathering, the feldspar content is altered by hydrolysis (reaction with water) to

form clay minerals such as kaolinites and smectites. Geologic clay deposits are mostly composed of phyllosillicate minerals containing variable amounts of water trapped in the mineral structure. Clays are plastic due to particle size and geometry as well as water content and become hard, brittle and non-plastic upon drying or firing. Depending on the soil's content in which it is found, clay can appear in various colours from white to dull grey or brown to deep orange-red. In contrast, silts which are fine-grained soils that do not include clay minerals and tend to have larger particle sizes than clays.[2]

18. India makes a distinction between "ordinary earth" used for filling or levelling purposes in construction of embankments, roads, railways and buildings, and "brick earth" used for brick making, and has notified both of them as minor minerals and has subjected them to regulatory regime.[3]

19. Reverting to the case in hand, the Petitioner claims that he has purchased a piece of land near Raja Jang, District Kasur, from which he digs earth and transports it to his kiln in Raiwind, District Lahore, for making bricks but on the instructions of the Deputy Director, Mines and Minerals, Respondent No.3 has started stopping his vehicles on the pretext that they carry Bassar/Ghassar. Indubitably the onus was on the Petitioner to prove his contention but he has not produced any material on record in this regard. He has not even filed any document regarding his ownership of the alleged land in Raja Jang. In the circumstances, the matter requires factual inquiry which cannot be undertaken by this Court in these proceedings. Reliance is placed on Collector of Customs, Lahore and others v. Universal Gateway Trading Corporation and another (2005 SCMR 37) in which the Hon'ble Supreme Court of Pakistan held:

"Superior Courts should not involve themselves into a thorough probe or in-depth investigation of disputed questions of fact which necessitate taking of evidence. In-depth investigation can conveniently and appropriately be done by the forums available in the hierarchy. Constitutional jurisdiction is primarily meant to provide expeditious and efficacious remedy in a case where illegality, impropriety and flagrant violation of law regarding action of the authority is apparent and can be established without any comprehensive inquiry into complicated, ticklish, controversial and disputed facts. Controversial questions cannot be decided by High Court in exercise of powers as conferred upon it under Article 199 of the Constitution."[4]

20. In view of the above, the Petitioner is directed to seek his remedy before the appropriate forum.

21. Earth has immense resources which are necessary to sustain human life. There is always a tension between those who would circumscribe these riches to private use and those who would carefully allot them to satisfy needs of the public-at-large. However, it is always thought that some of these resources are so important

for human existence that they should be held in common and stewarded by the government.

22. The ancient laws of Byzantine Emperor Justinian contained the concept of res communis which has come to be known as the Public Trust Doctrine. It implied that certain properties such as air, running water, the sea and the sea shores were common property shared by all the citizens. The title to these essential resources vested in the State in trust for the benefit of the general public. The State was thus bound to protect them for their uninterrupted use. In England, this concept was reflected in the common law and paragraph-5 of Magna Carta. In 1225 King John was forced to revoke his cronies' exclusive fishing and hunting rights because they violated the public's right to access these common properties. Thereafter, in 1865, the House of Lords applied the concept of public trust in the case of Gann v. Free Fishers of Whitstable [11 E.R. 1305 (1865) = 11 H.L. Cas. 192] holding that the bed of all navigable rivers where the tide flows, and all estuaries or arms of the sea, is vested in the Crown whose ownership is for the benefit of the subjects and cannot be used in any manner so as to derogate from, or interfere with the right of navigation which belongs by law to the subject of realm. In America, the Public Trust Doctrine was applied for the first time by the New Jersey state court in Arnold v. Mundy [6 N.J.L. 1, 53 (1821)] and then by the Supreme Court of the United States in Martin v. Waddell, 41 U.S. 367 (1842). However, the seminal American case is Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892). Illinois wanted to give Chicago's entire lakeshore to a private railway company. The Supreme Court held that it could not do so as the lake and the ground were protected by "a title held in trust for the people of the state so that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein free from obstruction or interference of private parties." David Takacs[5] notices three elements of vital significance in this decision: "(i) the sovereign holds certain resources in trust for the common good; (ii) the public has some kind of right to protection of these resources; and (iii) while democracy may seem subverted when a court overrules the acts of elected officials, such judicial acts in fact serve democracy by preserving rights invested in all the people."

23. The Public Trust Doctrine borrows its basic construct and some of its tenets (though not all) from the private trust law. Like the latter it involves three elements: a trustee, a beneficiary and trust property. Here, the trust property consists of natural resources. The government is their trustee and must manage them subject to fiduciary duties for the benefit of both present and future generations who are the beneficiaries of the public trust. As in the private trust context, the trustee of the public trust must adhere to both substantive and procedural duties. The former includes: (i) the duty of protection; (ii) the duty against waste; (iii) the duty to maximize the value of trust resources; (iv) the duty to restore trust resources when damaged; and (v) the duty against privatizing trust

resources. On the other hand, procedural duties are: (i) the duty of loyalty; (ii) the duty to supervise agents; (iii) the duty of good faith and reasonable care; (iv) the duty of precaution; and (v) the duty to furnish information to beneficiaries (accounting).[6.]

24. In 1970, Joseph L. Sax, Professor of Law, University of Michigan[7] gave a new impetus to the Public Trust Doctrine in natural resource law. He argued that certain resources have great importance to the people as a whole and it would be unjustified to make them a subject of private ownership. According to him, the government is obligated to preserve and hold them in trust for the general public so that they may enjoy them. "The Public Trust Doctrine charges the State with a two-fold duty: the duty to protect the res against substantial impairment, and the duty to repair if any damage is caused to it. Public trust obligations impose three types of restrictions on governmental authority: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for fair cash equivalent; and, third, the property must be maintained for particular types of uses." Sax wrote:

"If any analysis in this article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffused public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the delicate mixture of procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining of wetland filling on private lands in a state where governmental permits are required."

25. Sax further said that public trust obligations were separate and distinct from (and, in fact, go beyond) the State's duty to enact laws and regulations that purport to manage the res. Moreover, these duties were active, not merely passive. It was not sufficient that laws and regulations were passed: they must actually work to protect the trust resources. Every citizen has the right to question government decisions and hold the authorities accountable for their treatment of these resources. David Takacs opines that Sax's notion of Public Trust Doctrine articulates a philosophy where public interests in the environment do and should trump private interests.

26. Meanwhile, the Public Trust Doctrine continued to be applied in the United States. However, the jurisprudence on this doctrine was further expanded by Natural Audubon Society v. Superior Court, [658 P.2d 709 (Cal. 1983)], commonly referred to as the Mono Lake Case. The plaintiffs alleged that the City of Los Angeles Department

of Water and Power was violating the Public Trust Doctrine by diverting huge amounts of water from the lake's tributary streams that fed the lake which caused environmental damage. The Department took the defence that the diversions were allowable as it held permits therefor from the state. The California Supreme Court ruled that "the state as sovereign retains continuing supervisory control over its navigable waters and the lands beneath those waters. No party has a vested right to appropriate water in a manner harmful to the interests protected by the public trust ... once the state has approved an appropriation, the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water. In exercising its sovereign power to allocate water resources in the public interest, the state is not confined by past allocation decisions which may be incorrect in the light of current knowledge or inconsistent with current needs ... accordingly it may reconsider those decisions even though they were made after due consideration of their effect on the public trust."

27. The Public Trust Doctrine is a part of the international environmental law since the Stockholm Declaration, 1972. Reference may be made to Principles 2 and 3 of the said Declaration which read as under:

Principle 2

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 3

The capacity of the earth to produce vital renewable resources must be maintained and, whenever practicable, restored or improved.

28. A number of international bilateral and multilateral treaties and proceedings of international bodies also incorporate the concept of public trusteeship though most of them do not specifically use the term in question. It is the basis of the United Nations Framework Convention on Climate Change (1992) and the Paris Agreement (2016).

29. The courts in various countries are fain to apply the concept of public-trust in increasing number of cases. For example, in the Philippines, in the landmark case of Oposa v. Factoran, Jr. [224 SCRA 792 (1993)], the Supreme Court nullified the timber licence agreements that authorized the logging of the country's ancient forest. It said:

"Every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology... This belongs to an altogether different category of

rights because it concerns nothing less than self-preservation and self-perpetuation. .. the advancement of which may even be said to predate all governments and constitutions."

30. More recently, in Metro Manila Development Authority v. Concerned Residents of Manila Bay, [574 SCRA 661 (2008)], the Supreme Court of Philippines issued a writ of continuous mandamus to the government to clean up, rehabilitate and preserve Manila Bay. It said:

"The importance of Manila Bay as a sea resource, playground, and as a historic landmark cannot be over-emphasized. It is not too late in the day to restore Manila Bay to its former splendor and bring back the plants and sea life once thrived in its blue waters ... the right to a balanced and healthful ecology need not even be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications. Even assuming the absence of categorical legal provisions specifically prodding the petitioners to clean up the bay, they and the men and the women representing them cannot escape their obligation to future generations of Filipinos to keep the waters of the Manila Bay clean and clear as humanly as possible. Anything less would be a betrayal of the trust reposed in them."

31. The Supreme Court of India recognized the Public Trust Doctrine in State of Tamil Nadu v. Hind Stone [1981 SCC (2) 205]. The state government of Tamil Nadu enacted the Tamil Nadu Minor Mineral Concession Rules, 1959. Rule 8 thereof prescribed procedure for lease of quarries to private persons. In 1977 it made an amendment and introduced Rule 8C which restricted quarrying of black granite to corporations wholly owned by the government and banned grant of leases to private persons. The Supreme Court dismissed petitions challenging vires of Rule 8C holding that it was made in bona fide exercise of the rule-making powers to conserve minerals and protect them from imprudent and indiscriminate exploitation. The Court observed:

"Rivers, forests, minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation."

32. M.C. Mehta v. Kamal Nath and others [(1997) SCC 388] is another landmark case. The Minister for Environment allowed a motel to be built on the bank of River Beas which interfered with the natural flow of the river. The Supreme Court of India observed that the issue illustrated the "classic struggle" between those members of the public who would preserve rivers, forests, parks and open lands in their pristine purity and those charged with administrative

responsibilities who, under the pressures of changing needs of an increasingly complex society, find it necessary to encroach upon open lands which were previously considered inviolable. The Court invoked the Public Trust Doctrine and declared the action illegal holding that:

"Our legal system-based on English common law-includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public-at-large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."

33. In M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and others [(1999) 6 SCC 464], the Supreme Court of India while reaffirming the Public Trust Doctrine linked it to right to life[8] and held that a public park could not be replaced with a shopping complex as it affects quality of life of the people.

34. Intellectuals Forum, Tirupathi v. State of A.P. and others (AIR 2006 SC 1350) once again emphasized the need to protect natural resources. The Supreme Court of India ruled that public trust was an affirmation of the duty of the State to protect people's common heritage and iterated that the said doctrine along with the principles of sustainable development and inter-generational equity must be applied for adjudication of matters concerning environment and ecology.

35. In our country, Ms. Shehla Zia and others v. WAPDA (PLD 1994 SC 693) is the lodestar case on environmental jurisprudence. It was a public interest litigation in which the petitioners challenged construction of a grid station by the Water and Power Development Authority in their residential area on the ground that electromagnetic field created by it would pose a threat to their health. The Supreme Court of Pakistan observed that balance should be struck between the rights of the citizens and the plans executed by the Authority for the welfare, economic progress and prosperity of the country and if there were threats of serious damage, effective measures should be taken to control it. This case is significant for two reasons: firstly, it held that the right to life should be interpreted to encompass environmental rights. Secondly, it laid the foundation for the rule of the Precautionary Principle which is akin to the Public Trust Doctrine.

36. Sindh Institute of Urology and Transplantation and others v. Nestle Milkpak Limited (2005 CLC 424) was the first case in Pakistan in which the Sindh High Court applied the Public Trust Doctrine directly. The defendant, a multinational company, started construction of a water bottling plant close to Karachi aimed at saving transportation costs in supplying bottled water to the city by tapping into and making free use of the sub-soil water/acquifier

underlying the land reserved for establishing health and educational institutions to be termed as "Education City". The plaintiffs filed a suit seeking a declaration that it was illegal and prayed that pending its disposal an interim injunction be issued restraining it from proceeding with its project. The defendant inter alia contended that under Section 7 of the Easements Act, 1882, every owner of land had absolute right to enjoy and dispose of his immovable property. There was no law for the time being in force in Pakistan prohibiting it from using the sub-soil water by installation of tube-wells in its own land and extract any amount of water that it required. The Court rejected the contention holding as under:

"No civilized society can permit unfettered exploitation of its natural resources by anyone particularly in respect of the water which is a necessity of the life. Ground water is a national wealth and belongs to entire society. It is a Nectar, sustaining life on earth and without water, the earth would be desert...It is well-settled that natural resources like air, sea, waters, and forests are like public trust. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status. 'Doctrine of Public Trust', as developed during the days of ancient Roman Empire, enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

This decision was upheld in Intra-Court Appeal vide judgment reported as 2005 CLC 424.

37. Chronologically, the second case in which the Doctrine of Public Trust was directly applied in our country was Moulvi Iqbal Haider v. Capital Development Authority and others (PLD 2006 SC 394). In that case the petitioner challenged the construction of a golf course on a public park. The Supreme Court of Pakistan declared the conversion illegal on the ground that it violated fundamental rights guaranteed by the Constitution. It held:

"... Jubilee Park was earmarked in the original scheme of Sector F-7. It was meant for low income group, who are deprived of the benefits of having their own private gardens, comparing to higher income groups, therefore, converting such park for commercial activity with the collaboration of multinational companies would deny the rights guaranteed to them."

38. Muhammad Tariq Abbasi and others v. Defence Housing Authority and others (2007 CLC 1358) is another case on this point. The Defence Housing Authority converted an amenity plot reserved for park near the Clifton Beach and used it for construction of a multistoried official complex and a residential tower with a shopping mall. The petitioners impugned the project, amongst others, on the ground that it would be detrimental to the interest of the general public as it would deny them easy access to the beach. The Sindh High Court upheld this contention and ruled:

"... [T]he Hon'ble Supreme Court in the case of Ardeshir Cowasjee v. KBCA (1999 SCMR 2883) and Moulvi Iqbal Haider v. CDA (supra) has recognized that the right of access of public-at-large to parks etc. is a fundamental right guaranteed under Article 9 of the Constitution as it can be equated to the right to life provided for therein ... [T]he doctrine of public trust has long been recognized all over the world which enjoins the State to preserve and protect the public interest in beaches, lakeshores etc ... This Court in the case of Sindh Institute of Urology and Transplantation and others v. Nestle Milkpak Limited (2005 CLC 424) has recognized the public trust doctrine extending to natural resources, viz, air, sea, water and forests, which being a gift of nature should be made freely available to everyone irrespective of status."

39. In addition to the foregoing, our courts have delivered a number of remarkable judgments on the basis of the Public Trust Doctrine which include Suo Motu Case reported as Cutting of Trees for Canal Widening Project, Lahore (2011 SCMR 1743) and Kamil Khan Mumtaz and others v. Province of Punjab through Chief Secretary, Government of Punjab, Lahore and others (PLD 2016 Lah. 699). As a result, our jurisprudence on this concept is continuously developing. In Maple Leaf Cement Factory Ltd. v. Environmental Protection Agency and others (PLD 2018 Lah. 255), a case in which the Petitioner challenged the Signal Free Corridor Project in Lahore, a Full Bench of this Court observed:

"The corpus of environmental laws have a singular purpose of protecting life and nature, including the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Our existing jurisprudence (led by the landmark judgment of Shehla Zia case, PLD 1994 SC 693) rests environmental justice on right to life (Article 9) to mean a right to a healthier and cleaner environment. Time has come to move on. To us environmental justice is an amalgam of the constitutional principles of democracy, equality, social, economic and political justice guaranteed under our Objectives Resolution, the fundamental right to life, liberty and human dignity (Article 14) which include the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra- generational equity and public trust doctrine."

40. The Public Trust doctrine is the foundational principle of sustainable development which is cherished by every nation. Sustainable development is most often understood in terms it was defined in the Brundtland Report[9] which stated that it is "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs."[10] There are a number of scholarly writings on the concept of sustainable development and it is also reflected in a huge number of international agreements, guidelines and declarative texts though some of them define it only contextually. However, the mainstream

definitions and international instruments show that this concept comprises the following four legal elements: First, the need to preserve natural resources for the benefit of future generations (the principle of inter-generational equity). Second, the aim of exploiting natural resources in a manner which is 'sustainable', or 'prudent', or 'rational', or 'wise', or 'appropriate' (the principle of sustainable use). Third, the 'equitable' use of natural resources, which implies that use by one State must take account of the needs of other States (the principle of equitable use, or inter-generational equity). And fourth, the need to ensure that environmental consideration are integrated into economic and other development plans, programmes and projects, and that development needs are taken into account in applying the environmental objectives (the principle of integration)[11] "The link between basal view of sustainable development and the PTD is through the latter's protection of resources for future generations of trust beneficiaries. By mandating the governmental trustees to treat the interests of current and future citizens equally, the notion of intergenerational equity is inherent to the PTD."[12]

41. The Intergovernmental Panel on Climate Change (IPCC), an intergovernmental body of the United Nations [13] has released its Special Report on Climate Change and Land, 2019 (SRCCL), in which it has noted that land is vital for food security and plays an important role in the climate system. Therefore, it has termed it as a "critical" resource and has urged the States to conserve, manage and use their land resource intelligently. This would also help them attain sustainable development. SRCCL states:

"A wide range of adaptation and mitigation responses, e.g. preserving and restoring natural ecosystems such as peatlands, costal lands and forests, biodiversity conservation, reducing competition for land, fire management, soil management, and most risk management options (e.g. use of local seeds, disaster risk management, risk sharing instruments) have the potentials to make positive constructions to sustainable development, enhancement of ecosystem functions and services and other societal goals. Ecosystem-based adoption can, in some contexts promote nature conservation while alleviating poverty and even provide co-benefits by removing greenhouse gases and protecting livelihoods … Sustainable land management can prevent and reduce land degradation, maintain land productivity, and sometimes reverse the adverse impacts of climate change and land degradation. It can also contribute to mitigation and adaptation."

42. As discussed above, the Public Trust Doctrine historically applied to a limited set of natural resources but it has been expanded over time. In Borough of Neptune City v. Borough of Avon-By-the-Sea, [(61 N.J. 296 (1972)], the Supreme Court of New Jersey ruled that "the public trust doctrine should not be considered fixed or static, but should be moulded and extended to meet changing conditions and needs of the people it was created to benefit." Today there are growing voices for climate justice that moves beyond the construct of environmental justice (which is by and large localized)

and embraces new dimensions. In Asghar Leghari v. Federation of Pakistan and others (PLD 2018 Lah. 364), Syed Mansoor Ali Shah, CJ (as he was then) wrote:

"Climate Justice links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly. Climate justice is informed by science, responds to science and acknowledges the need for equitable stewardship of the word's resources... Charge has moved the debate from a linear local environmental issue to a more complex global problem. In this context of climate charge, the identity of the polluter is not clearly ascertainable and by and large falls outside the national jurisdiction... Climate Justice, therefore, moves beyond the construct of environmental justice. It has to embrace multiple new dimensions like Health Security, Food Security, Energy Security, Water Security, Human Displacement, Human Trafficking and Disasters Management within its fold. Climate Justice covers agriculture, health, food, building approvals, industrial licences, technology, infrastructural work, human resource, human and climate trafficking, disaster preparedness, health, etc."

43. The "brick-earth" which the kilns use for brick-making in Pakistan mostly consists of soil as the Petitioner in the instant case admitted before this Court. Soil is considered to be "skin of the earth". It is a mixture of minerals, organic matter, gases, liquids and countless organisms. It is made of distinct horizontal layers called "horizons" which range from rich, organic upper layers (humus and topsoil) to underlying rocky layers (sub-soil, regolith and bedrock). The soil horizon may vary in thickness, mineral composition and structure. Soil is essential for life because it provides medium for plant growth, acts as a filtration system for surface water, maintains the balance in atmospheric gases, stores carbon and is a habitat for several organisms.[14] "Ecologically, soil is the most dynamic component (lithosphere) of the global environment encompassing distinct communities of organisms in its realm".[15] It is one of the most valuable natural resource and is the result of natural activity of millions of years.[16]

44. Topsoil, the upper outermost layer of the soil, usually the top five to ten inches, has the highest concentration of organic matter and micro-organisms. It is here that most of the Earth's biological soil activity occurs. Topsoil is composed of mineral particles, organic matter, water and air.[17] A fertile topsoil has concentration of nutrients, including potassium, phosphorous and iron, which vary depending on geographic region and climate, as well as human activity.

45. Brick kiln owners excavate soil with impunity. More often than not the entire layer of topsoil is dug out which has serious repercussions. The fertility of that particular piece of land is reduced and irrigation of the neighbouring plots is adversely affected. This

leads to desertification and low agricultural yields which eventually impact our country's food security. Besides, it contributes to environmental degradation and climate change. In the circumstances, the Public Trust Doctrine can legitimately be extended to soil. David Takacs argues:

"A growing body of Public Trust Doctrine case law has accreted since the 19th Century in the United States. Thus private property owners ought to be on notice that they may not arrogate private trust environmental resources... Environmental Human Rights have enormous potential to create new prohibitions on what a property owner may do with her land."[18]

46. This Court has noted with grave concern that there is no check on reckless soil digging in Pakistan in general and the Punjab in particular. There is an urgent need to draw integrated environmental policies for sustainable development and protection and conservation of species, habitats, biodiversity and natural resources. These are required not only in our national interest but are also needed to meet our international obligations and achieve the Sustainable Development Goals.[19] The apathy of the executive and the legislature is heart-rending.

47. It is trite that courts cannot issue a writ/direction to the legislature to enact a law. However, in Sharaf Faridi and 3 others v. The Federation of Islamic Republic of Pakistan through Prime Minister of Pakistan and another (PLD 1989 Kar. 404) a seven-member Bench of the Sindh High Court held that in exceptional circumstances it may issue a direction to the Federal and/or Provincial Government to initiate legislative measures. The Court reasoned that there is a marked distinction in a direction to the legislature to legislate and a direction to the Executive to initiate legislative measures. This view was upheld by the august Supreme Court of Pakistan in Al-Jehad Trust through Habibul Wahab Al-Khairi Advocate and 9 others v. Federation of Pakistan through Secretary, Ministry of Kashmir Affairs, Islamabad (1999 SCMR 1379) and reiterated in Province of Sindh through Chief Secretary and others v. M.Q.M. through Deputy Convener and others (PLD 2014 SC 531). Following these authorities, the High Courts in our country have given directions to the Government in a number of cases to take steps for enacting a law or making amendments in an existing one. In this regard reference may be made to Minoo Hoshang Kapadia, Karachi v. Arnaz Minoo Kapadia, Karachi (PLD 2008 Kar. 271), Riaz Hanif Rahi v. Federation of Pakistan through Ministry of Law and Justice, Islamabad and 9 others (PLD 2015 Islamabad 7), Walid Iqbal v. Federation of Pakistan and others (PLD 2018 Lah. 1) and Subay Khan v. Federation of Pakistan through Secretary and Ministry of Law and 2 others (PLJ 2018 Lah. 224).

48. In view of the circumstances narrated above, in my opinion, in the instant case a direction is required to be issued. Accordingly, the Government of Punjab is directed to initiate appropriate administrative and legislative measures within a period of six

months from the date of announcement of this judgment to regulate brick manufacturing in general and use and conservation of soil in particular. For this purpose it shall take all stakeholders on board, including (but not limited to), the representative body of brick kiln owners, the Chamber of Commerce and Industry, the Department of Mines and Minerals, Agriculture Department and the Environment Protection Department. The Registrar of this Court shall immediately transmit a copy of this judgment to the Chief Secretary, Punjab, for compliance.

49. This petition stands disposed of with the above directions.

MWA/M-178/L Order accordingly.

Case 8: Islamabad Wildlife Management Board Through Chairman---Petitioner

P L D 2021 Islamabad 6

Before Athar Minallah, C.J.

ISLAMABAD WILDLIFE MANAGEMENT BOARD through Chairman---Petitioner

Versus

METROPOLITAN CORPORATION, ISLAMABAD through Mayor and 4 others---Respondents

Writ Petition No. 1155 of 2019, decided on 21st May, 2020.

Date of hearing: 25th April, 2020.

JUDGMENT

ATHAR MINALLAH, C.J.---

"A good deed done to an animal is as meritorious as a good deed done to a human being, while an act of cruelty to an animal is as bad as an act of cruelty to a human being."

..Prophet Muhammad (SAW)

The emergence of the dangerous infectious pandemic Covid-19 has had a profound impact on the human race and its way of life. It is a pandemic because it has spread over continents and has affected humans globally. The human race, despite its superior characteristics and qualities of cognition and intelligence, has become helpless before an invisible and lethal virus. It appears that humans may have to consider changing their outlook and lifestyle for good. It has threatened the very existence of the most superior form of life on this planet, humans, and has exposed its vulnerability. The arrogance of being superior to other living beings seems to have been forgotten in the face of the threat of an invisible and hitherto unknown enemy. Billions across the globe have voluntarily gone into 'captivity' fearing death and illness. It has denied the most superior being its natural instinct of having social relationships, opportunities of earning a livelihood have been lost, education in schools has been suspended. The human race is right now experiencing self imposed 'lockdown' to save itself from harm. It is unprecedented, probably never experienced before in human history, that holy places such as the Ka'bah, the Vatican, the Temple Mount, the Golden Temple, the Bodh Gaya, Sri Harmandir Sahib and many other revered religious sites are not allowing free

access to worshippers. There is an eerie silence in the Tower of London, the Great Wall of China, Time Square of New York, Champs Elysees in Paris and the streets of Venice in Italy and it is uncertain whether they will ever be the same when the pandemic is over. Nuclear bombs have lost importance while there is a rush to acquire ventilators to save lives. The race for acquiring superiority in manufacturing weapons to kill and destroy humans has been superseded by a race to develop a vaccine to fight a threatening virus. The pandemic seems to have changed the world for the time being. Has nature forced the human race to go into 'captivity' so as make it realize its dependence for survival on other beings possessed with a similar gift i.e. life? Is it an opportunity for humans to introspect and relate to the pain and distress suffered by other living beings, animal species, when they are subjugated and kept in captivity and denied the conditions and habitats created for their survival by the Creator, merely for momentary entertainment? The experts of the United Nations have warned that as a consequence of the 'lockdown' the world is likely to face a serious mental health crisis. The petitions in hand, besides raising questions of public importance, have a nexus with the threat to human existence highlighted by the current pandemic crisis. It has highlighted the interdependence of living beings on each other, the desperate need to restore the balance created in nature and, above all, it has conspicuously brought the essence, meaning and, significance of 'life' into the spotlight. The questions raised in these petitions are definitely in the context of the relationship of one form of life with another i.e. humans and the other living creatures called 'animals'. This Court has been called upon to recognize that animals have rights which ought to be respected or, rather, it is the duty of the human species to protect these rights for its own survival. The Marghazar Zoo of the Federal Territory of Islamabad (hereinafter referred to as the 'Zoo') and the treatment of living beings kept in captivity in its small and ill equipped enclosures is the subject matter of one of the petitions. A specific prayer has been sought to direct the respondents to relocate "Kaavan" the elephant to a sanctuary. In another petition prayers have been sought regarding a rescued Black Bear. The Bear was seized when it was being used for entertainment purposes by making it 'dance' and perform other tricks. It was in a shockingly distressing condition. A rope was passed through its muzzle and its teeth had been taken out in order to exercise control over it. An application was filed by one Farman Ali, son of Khan Mohammad, seeking to become a party to the proceedings. He asserted that he had bought the Bear from one Mohammad Riaz and that the latter was issued a license by the Punjab Wildlife Management Board. However, he could not produce any permission granted by the petitioner Board under the law enforced in the Islamabad Federal Capital Territory. The Bear was treated in a cruel manner and was rightly seized. The petitioner Board was, therefore, granted permission to shift and keep the Bear at the Balkasar Bear Sanctuary. It is noted that the applicant, namely Farman Ali, could not produce any document issued under the Islamabad Wildlife (Protection, Preservation, Conservation and

Management) Ordinance 1979 to establish his legal entitlement for possessing and presenting the seized Bear within the jurisdiction of the Islamabad Capital Territory for entertainment. The third petition is regarding the killing of stray dogs allegedly in a cruel manner. The Constitution of the Islamic Republic Pakistan, 1973 (hereinafter referred to as the 'Constitution'), like most of the other constitutions, has been framed by humans for regulating themselves. It is the basic law laying down rules as to how humans are to be governed. The fundamental rights guaranteed therein or the various types of writs that can be issued by a constitutional court are in the context of only one living species i.e. humans. It either contemplates a 'person' or a 'citizen'. Do other living beings, such as the species categorized as 'animals' and who share the gift of life with humans, have legal entitlements and thus enforceable 'rights'? Does the Constitution impose any duty or duties on the State and humans regarding the welfare of other species such as animals, their conservation and protection?

2. When these petitions were filed, the conditions at the Zoo were alarming and the lives of the captive living beings were at risk. The management was under the control of the Corporation. However, after the initial hearings it had become obvious that the Corporation had neither the resources nor the capacity and will to safeguard the wellbeing and welfare of the captive animals. The Federation, through the Secretary, Ministry of Climate Change and the Board of the petitioner entity, were directed to assist the management of the Zoo in order to protect the animals from harm. What ensued was not expected. Except for the petitioner Board and some passionate and dedicated private individuals including the counsels for the petitioners, others appeared to be more interested in gaining control of the management rather than securing the wellbeing of the animals. This Court had consciously given sufficient time to all the parties so that they could show their respective commitment in ensuring the wellbeing of the animals kept in captivity. Regretfully I have no hesitation in observing that such a commitment could not be displayed on the part of the authorities. It does not appear to be a priority to take immediate steps to provide the adequate habitat or abode for the behavioural, social and other needs of the 'animals' kept in captivity, nor can sufficient resources be allocated for this purpose. The caged living beings in the Zoo are undoubtedly in pain, distress and agony, definitely disproportionate to the purpose intended to be achieved by keeping them in this condition. As would be discussed in more detail, the conditions of captivity at the Zoo definitely amount to the criminal treatment of living beings. The Secretary, Ministry of Climate Change has submitted a report, explaining the efforts being made to improve conditions at the Zoo. The intent may be noble but the measures described are cosmetic and not enough to put an end to the unimaginable suffering of the caged living beings. Should they be allowed to continue suffering unnecessary pain, distress and agony? Should "Kaavan" continue to constantly sway and bob his head against the wall of his small dilapidated shed, displaying decades of pain and distress? Which

authority is competent and vested with jurisdiction to manage, administer and run the affairs of the Zoo? The question is whether the animals, i.e. non-human living creatures, have independent rights or, is there a duty on the part of the human race, through the State and its public functionaries, to protect, preserve and conserve such species? If the answer to the last question is in the affirmative, then it needs to be seen whether these obligations are being fulfilled in relation to the animals which have been kept in captivity in the Zoo? Whether the cruel treatment of animals breaches the right to life of the public at large? Whether the conditions in which these animals or living beings have been kept in the Zoo attracts the offences defined under the Prevention of Cruelty to Animals Act, 1890 (hereinafter referred to as the 'Act of 1890) and section 429 of the Pakistan Penal Code, 1860 (hereinafter referred to as the 'P.P.C.')?

3. In order to answer the above questions, it would be beneficial to examine the relevant laws and the precedent law developed in our jurisdiction and elsewhere regarding the status of animals, whether they have independent rights and the duties of humans to protect them. However, before proceeding, it would be appropriate to briefly describe the conditions at the Zoo and its inmates.

A. The Marghazar Zoo (the 'Zoo')

4. The capital of Pakistan, i.e. the Islamabad Capital Territory, is spread over an area of 1400 square miles at the foothills of the mountain range called 'Margallah'. After conducting extensive surveys and studies, Dr. C. A. Doxiadis, a renowned international town planner, submitted a final report consisting of three parts titled "Towards a new Capital", "Towards Islamabad" and "Programme and plan for Islamabad", respectively. The recommendations for the establishment of a new planned city, the capital of the Islamic Republic of Pakistan, was approved by the Federal Cabinet and the Capital Development Authority Ordinance, 1960 (hereinafter referred to as the 'Ordinance of 1960') was promulgated. Pursuant thereto the Capital Development Authority was established to execute the establishment of the capital of the country in accordance with the approved master plan. Another relevant legislation, which will be discussed later, i.e. the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (hereinafter referred to as the 'Wildlife Ordinance of 1979') was also promulgated. In 1978, the Zoo was established in the foothills of the Margalla Hills National Park in an area spread over 25 (twenty five) acres of land. It was initially managed and administered by the Capital Development Authority till its affairs were transferred to the Metropolitan Corporation Islamabad (hereinafter referred to as the 'Corporation') in 2016. When these petitions were filed, the Zoo was being managed and administered by the Corporation and the condition of the animals held in captivity was deplorable. This Court sought assistance from the World Wildlife Fund for Nature Pakistan (hereinafter referred to as the 'WWF-Pakistan') and the latter nominated Dr. Uzma Khan as an expert. She was accordingly

appointed as an amicus. The latter, along with representatives of the Board of the petitioner institution constituted under the Wildlife Ordinance of 1979, visited/inspected the Zoo. According to the report submitted by the amicus, when the Zoo was inspected, 878 non-human living creatures were kept in captivity to be exhibited to the visiting public. 89 were mammals representing 15 species, 769 birds of 38 different species while there were 20 reptiles belonging to three distinct species. A separate report was also filed on behalf of the Board constituted under the Wildlife Ordinance of 1979. The report submitted by the amicus appointed by this Court as well as the Board highlight extremely disturbing conditions in which the non human living beings have been kept in captivity and in complete disregard to their respective natural habitats. The animals, because of these conditions, are definitely suffering pain, distress and agony. The animals have been kept in small cages and enclosures without basic and necessary facilities required for the needs of this non human living species. There can be no denial that these non human living beings have been kept in conditions which cause distress and pain and thus amounts to cruel treatment. A short description of the captive animals at the Zoo are as follows.-

(a) "Kaavan", the Asian Elephant.

"Kaavan" was gifted by the Government of Sri Lanka in 1985 when he was one year old. His abode was a small enclosure in the Zoo. For more than three decades Kaavan has been kept chained in a small enclosure described by the amicus and the Wildlife Management Board as small, with inappropriate conditions required to meet the physiological, social and behavioural needs of this extraordinary species of living beings that has been gifted with 'life'. It has been reported that the 'mahouts' have a negative relationship with 'Kaavan'. Elephant food is sold to the visitors so that the latter can feed 'Kaavan'. The funds generated are not recorded and thus go unaccounted. The health condition of 'Kaavan' is also disturbing because it has been reported that growth, curving and split in toe nails is an indication of neglect and that it could cause serious consequences. The dry moat is a risk to the wellbeing of Kaavan. The diet given to Kaavan is sub standard and inadequate to meet its needs. This social living being has been kept in isolation since his female companion Saheli's death at the age of twenty two in 2012. According to the report submitted on behalf of the Wildlife Management Board, because of the conditions of captivity, Kaavan exhibits severe stereotype behaviour and may have also developed neurological problems. The management of the Zoo, because of shortage of funds, cannot maintain the cleanliness and hygiene of the enclosure and the small water pond. The management cannot even afford the purchase of lime stone chalking for this purpose. The distress, pain and suffering has been conspicuous to visitors during the thirty six years of captivity because of the constant bobbing and swaying of the helpless being. The visitors treat this as acts of entertainment by Kaavan but in reality it is an expression of loneliness, distress and suffering by the latter. It was reported in

July last year that the mahouts had allegedly stolen/misappropriated Kaavan's food and disciplinary proceedings were initiated against them. In March this year 'Kaavan' was forced to spend the night in the moat in cold weather because there was no one to rescue this majestic non human being. It has been reported that other animals from the wild such as wild Boars intrude into the enclosure because the fencing is dilapidated.

Asiatic Elephants have the attributes of a nomadic living being. They need to be constantly on the move and can cover more than ten kilometers a day. By nature they need a social structure to thrive and they exist in matriarchal herds. As will be discussed later, an elephant has exceptional abilities and one such member of the species, "Happy", an inmate of the Bronx zoo in the United States, has even passed the 'mirror test'. By now there is consensus that an Elephant has emotions and some are similar to those of a human. There also appears to be compelling evidence that zoo is not an appropriate place for this species and zoo's across the globe are considering to phase them out. They feel pain, distress, happiness as well as sadness. The birth of a baby elephant is celebrated while they cry and mourn the death of a member of the herd. Nature has created elephants to live, survive and thrive in a particular habitat. The destruction of its natural habitat at the hands of the humans has brought this amazing species to a brink of extinction. The needs of this innocent creation cannot be met in the captive environment of a zoo. Zoos do not serve any purpose except to display their living inmates as exhibits to visitors. Keeping in view the nature of the species and the deploring conditions in the Zoo, Kaavan is indeed suffering and is being treated in a manner that has subjected him to unnecessary pain and suffering. He is lonely and the extent of his suffering is unimaginable. In 2018 the Corporation was considering an offer from a charitable organization to shift Kaavan to a sanctuary but for unspecified reasons it could not materialize. Despite the realization that the conditions of captivity had subjected Kaavan to unnecessary pain and suffering, no visible steps were taken to effectively put an end to it. Even during the proceedings before this Court, it has become obvious that an end to the pain, agony and suffering of Kaavaan is not in sight. For the afore mentioned reasons, therefore, this Court has no hesitation in declaring that the treatment of Kaavan for more than three decades and his current status has subjected him to unnecessary pain and suffering. The management of the Zoo and the controlling authorities are presumed to know that such treatment is likely to cause loss and damage to the public because Kaavan belongs to them. The life of Kaavan is at risk and his wellbeing is undoubtedly compromised.

(b) The two Brown Bears.

The two brown bears have been kept in inadequately equipped and extremely small enclosures. Their hygiene, food requirements and health condition are severely neglected. The amicus, in her report, has described the confined area as a 'bare enclosure' because it is

bereft of any shade while the indoor area is all made of concrete. The health condition of the Bears was poor and one needed immediate medical assistance.

(c) The marsh Crocodile.

The marsh crocodile was confiscated and since then has been kept in captivity at the Zoo in conditions which raise serious concerns for its well being according to the reports of the amicus and the Wildlife Management Board. When it was inspected it showed signs of serious illness. Its area of confinement was so small that it could hardly move. Climatically, Islamabad is not suitable for keeping the species caged in the Zoo. It was not seen outside its small enclosure for a long time because of its condition and the inappropriate weather.

(d) Other captive non-human beings; lions, birds, wolves, ostriches etc.

Like Kaavan and the two bears, the living conditions of other caged animals has compromised their well being and exposed them to harm. The conditions described in the reports of the amicus and the Wildlife Management Board makes it obvious that they have been subjected to unnecessary pain and suffering. The lion is known as the 'king of the jungle'. By nature they are social and live in groups called a 'pride'. Lions are declared as vulnerable and are listed in the Red List of Threatened Species by the IUCN. Once found in abundance in three continents, their presence has now, been restricted to parts of Africa and India. They can live in a variety of habitats but by nature they thrive in savannas, grassland and open woodlands. According to the reports submitted in these proceedings, the lions in the Zoo are visibly malnourished. The interior of the enclosure is cemented and the conditions of captivity definitely do not meet the minimum international standards required to keep animal species in captivity. The wolves have been kept in an enclosure which, according to the reports of the experts, is absolutely inadequate. The conflict between the balance created in nature and the human desire to subjugate other species has been aptly described by the French playwright and screenwriter in these words; 'God loved the birds and invented trees, Man loved the birds and invented cages'. The conditions of the caged birds in the Zoo manifests neglect and a severe shortage of resources. The rats are in abundance while the caged birds are deprived of their basic needs, so much so that perching is also denied to them. According to the reports brought on record the birds cannot perch because of the inadequately constructed cages. The feathers on the back of the Ostriches were found missing. The water ponds are not properly maintained. The water is polluted and shows signs of neglect. Adequate animal husbandry facilities are also lacking.

In a nutshell, the conditions of captivity of living species in the Zoo undoubtedly and demonstrably manifests neglect and apathy. The facilities and resources are definitely lacking so as to provide for the

behavioural, social and physiological needs of the captive non human living species. The visitors also do not appear to be aware of their responsibilities towards the helpless living beings who can only express the pain of suffering through abnormal behavior. It has been reported that the visitors tease the caged animals by throwing articles, pelting stones, poking at them or disturbing them with loud noise. This heckling and teasing of the caged animals further exacerbates their pain and agony. By no stretch of the imagination do the conditions of captivity at the Zoo meet the needs of the living species, rather they have been subjected to unnecessary pain and suffering, while the management is presumed to know that in such an eventuality the lives of the captive animals are at risk. It is ironic that the Zoo has never adopted or followed minimum standards and guidelines, let alone the ones adhered to internationally.

The current conditions of the Zoo do not qualify it to be termed as a zoological garden. It is a mere menagerie because captive animals are displayed without being properly cared for. The existence of the Zoo in its present condition and the treatment of these non-human living beings definitely attracts criminal offences, as will be discussed later. The captivity of the animals in the Zoo, besides violating the fundamental right to life of humans, is otherwise illegal. The authorities in control of the management of the Zoo have kept the animals in conditions not permitted by the law and they have refused to fulfill obligations and duties imposed by the law despite repeated demands by members of the general public. They have also failed to produce any authorization or license required under the Ordinance of 1979.

B. Which authority is empowered under the law to administer the affairs of the Zoo?

5. As already noted above, the Capital Development Authority, established under the Ordinance of 1960, came into existence for making arrangements for the planning and development of Islamabad within the frame-work of a regional development plan. The Ordinance of 1960 does not contemplate or provide for the management or administration of a zoo by the Capital Development Authority. On the other hand, the Wildlife Ordinance of 1979 was promulgated as a special law with the explicit object of providing for the protection, preservation, conservation and management of wildlife and the setting up of a national park in the Islamabad Capital Territory.

(a) The Wildlife Ordinance of 1979.

The Wildlife Ordinance of 1979 was promulgated to provide for the protection, preservation, conservation and management of wildlife and the setting up of a National Park in the Islamabad Capital Territory. The Wildlife Ordinance of 1979 extends to the entire area of the Islamabad Capital Territory. Section 2 defines various expressions. A 'wild animal' has been defined as an animal or bird specified in the First Schedule or Third Schedule ibid. Protected

animals have been specified in the latter Schedule. Possession or trade of or otherwise dealing with an animal requires some form of authorization e.g. a license or certificate issued by an Authorized Officer. An authorized officer has statutory powers to seize an animal if found in possession of a person not authorized under the Wildlife Ordinance of 1979. Section 26 makes it a criminal offence and a person who keeps in possession, trades or otherwise deals with an animal in violation of the provisions of the statute is liable to be prosecuted, besides being charged under any other law. The authorized officer is also empowered to seize and confiscate an animal found to be dealt with in violation of the provisions of the Wildlife Ordinance of 1979. Clause (l) of section 2 defines "National Park" as meaning an area declared as such under section 21. Section 4 provides for the constitution of the Board of Wildlife Management. Section 20 provides for the declaration of a 'wildlife sanctuary', The Federal Government, in exercise of its powers vested under section 20, has issued Notification No.3(15)/76- Capital Development Authority. III(3), dated 27th April, 1980 (hereinafter referred to as the 'Wildlife Sanctuary Notification'). The said notification is reproduced as follows.--

"No.3(15)/76-Capital Development Authority.III(3), dated 27th April, 1980. In exercise of the powers conferred by subsection (1) of section 20 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management Ordinance, 1979) (LXX of 1979), the Federal Government is pleased to declare the following areas of the Islamabad Capital Territory to be the Wildlife sanctuaries namely:

(1) All public open spaces, developed or underdeveloped within the municipal limits of Islamabad, excluding the areas declared to be a national park under the said Ordinance.

(2) Bannigallah hills bounded by Kurang river in the north, Mohra Noor in the west, that in the east and Belgh in the south; and

(3) C.D.A. Nursery at Chak Shahzad."

Likewise section 21 empowers the Federal Government to declare any area to be a National Park with a view to protect, preserve the scenery, flora and fauna in natural state. The Federal Government in exercise of its powers under section 21 has issued S.R.O. 433(I)/80 dated 28th April, 1980 and the same is reproduced as follows.-

"No.S.R.O. 443(I)/80, dated 28th April, 1980. In exercise of the powers conferred by subsection (1) of section 21 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (LXX of 1979), the Federal Government is pleased to declare the following areas to be the Margallah Hills National Park, namely:

(1) Margallah Reserve Forest comprising compartments Nos. 2 to 5, 7 to 23, 28, 30 to 38(i) and 41(ii).

(2) Military Grass Farm comprising compartments 1 to 25.

(3) Lands falling in villages Mangial, Malach Dakhli, Phulgran, Mandla, Jhang Bagial, Malpur (Bijran), Rumli, Narias, Padoh Dakhli, Noorpur Shahan, Ratta Hottar, Saidpur, Dhoke Jiwan, Gandiar, Kalinjar and Saniari.

(4) Area bounded by Shahrah-i-Kashmir in the north, Shahrah-i-Islamabad in the west and Murree Road in the south and east upto its junction with Shahrah-i-Kashmir; and

(5) Rawal lake and area within a distance of 2 Kilometers from the highest water mark of Rawal Lake."

Section 22 empowers the Federal Government to declare in the prescribed manner an area to be a game reserve and pursuant thereto S.R.O. No.444(I)/80, dated 27th April, 1980 has been issued and the same is reproduced as follows.-

"No.S.R.O. 444(I)/80. In exercise of the powers conferred by subsection (1) of section 22 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (LXX of 1979), the Federal Government is pleased to declare the whole of the Islamabad Capital Territory, except the areas declared as wildlife sanctuary and national park, to be the game reserve."

It is ironic that, although the Wildlife Ordinance of 1979 came into force on December 19, 1979, it was not made operative till this Court, in 2014, directed the Federal Government to constitute the Board. It is one of the most important legislations because of its close nexus with the preservation, protection and conservation of wildlife and the consequences of neglect for the future generations. It has a direct relationship with the right to life of the human species. It is even more ironic that the notified 'wildlife sanctuary' was gradually encroached upon and destroyed by the privileged. The Federal Government, the administration of Islamabad Capital Territory and the Capital Development Authority were complacent in this classic example of destruction of habitat. The invasive species i.e humans, have deprived the wildlife native species of its habitat, which was protected under the law. It manifests how humans have undermined the rule of law and threatened the balance created by nature. Habitat loss has irreversible consequences, not only for the present but more so for posterity. Nonetheless, those who have invaded and destroyed the 'wildlife sanctuary' have and continue to violate the Wildlife Ordinance 1979. It was the duty of the State and the responsible authorities to have jealously guarded against any invasion or intrusion into the wildlife sanctuary, which is notified and protected under the aforesaid statute.

(b) The Islamabad Wildlife (Protection, Preservation, Conservation and Management) Rules, 1983 (hereinafter referred to as the 'Rules of 1983')

In exercise of powers conferred under section 41 of the Wildlife Ordinance of 1979, the Federal Government has made and notified the Rules of 1983. Clause (aa) of Rule 2 defines the Board as meaning the Board of Wildlife Management Constituted under section 4 ibid. Rule 2A describes the constitution of the Board. It draws a distinction between ex-officio members and the non-official members. Section 4 of the Wildlife Ordinance of 1979 explicitly empowers the Federal Government not only to constitute the Board but to appoint its Chairman as well. The Federal Cabinet has recently amended rule 2A of the Rules of 1983 and a notification, dated 16.03.2020, has been issued giving effect thereto. The relevant portion is reproduced as follows.

"(a) The Board shall consist of Minister-in-Charge of the Ministry of Climate Change or concerned Advisor to Prime Minister (if any), concerned Minister of State (if any), concerned Parliamentary Secretary (if any), concerned Special Assistant to Prime Minister (if any), Secretary, Ministry of Climate Change; Chairman, Capital Development Authority, Chief Metropolitan Officer, Metropolitan Corporation, Islamabad; Inspector General of Forests and Wildlife, Ministry of Climate Change; Secretary Forests and Wildlife, Punjab and Secretary Forests and Wildlife Khyber Pakhtunkhwa who shall be ex-officio members and the remaining members to be appointed by the Federal Government, who shall be non-official Members. The Minister Incharge may nominate any member as Chairperson of the Board for a specific meeting, in case he cannot chair the meeting himself."

It is noted that, prima facie, having regard to the importance of the object and purpose of the Wildlife Ordinance 1979 and the powers and functions of the Board of Wildlife Management, the legislature intended that the Chairman of the Board will be appointed on a permanent basis and not by a person delegated the power. Whether the Federal Government is empowered to delegate the power of appointment of the Chairman to the Minister incharge of the Ministry of Climate Change requires to be reviewed in the light of section 4 read with section 38 of the Wildlife Ordinance 1979 and the law enunciated by the august Supreme Court in the case titled Messers Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others' [PLD 2016 SC 808]. Prima facie, the minister of the Ministry of Climate Change does not appear to fall within the expression 'officer' used in section 38. Since this question was not argued during these proceedings, therefore, this Court exercises restraint and expects that the legality would be examined by the Federal Government on its own. The functions and powers of the Board are described under rules 3 and 4 respectively. Rule 3(i) explicitly provides that taking policy decisions, drawing plans, programs and executing them, inter alia, with regard to zoos in the Islamabad Capital Territory shall vest in the Board. It is obvious from a cumulative reading of the Ordinance of 1979 and the Rules of 1983 that all matters relating to

the protection, preservation and management of wildlife, including a zoo in the Islamabad Capital Territory, are governed there under.

(c) Islamabad Capital Territory Local Government Act 2015 (hereinafter referred to as the 'Act of 2015').

The Act of 2015 was promulgated to establish an elected Local Government system and, pursuant thereto, to devolve political, administrative and financial responsibilities and authority to the elected representatives of such Local Governments and to promote good governance, effective delivery of services and transparent decisions. Section 2(x) defines Local Government as meaning a union council or the Metropolitan Corporation established under the Act of 2015. The composition of the Metropolitan Corporation has been described in section 12. Section 72 provides that the Corporation shall be a body corporate having perpetual succession and a common seal and it may acquire and hold property and enter into any contract and may sue and be sued in its own name. The functions of the Corporation are described in section 73 as those mentioned it the Third Schedule. The Corporation has taken a stance that the management and administration of the Zoo falls within its competence and jurisdiction in the light of clause (9) of the Ninth Schedule and the same is reproduced as follows.-

"8. Cattle shows, zoo, etc.---(1) A local government may hold cattle shows, cattle fairs and cattle markets within the limits of its local area and charge such fee or tax per cattle head sold as the byelaws may provide.

(2) A local government may, with the previous approval of the Government, maintain or contribute towards the maintenance of zoological gardens.

The learned counsel for the Corporation could not place any document on record to show that the Federal Government had granted approval in accordance with the law enunciated by the august Supreme Court in the case titled 'Messers Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others' [PLD 2016 SC 808] in terms of the above provision. Moreover, clause (u) of the Third Schedule is also not attracted in the case of the management of a zoo. The Wildlife Ordinance of 1979 is a special law which was explicitly promulgated with the object to provide for the protection, preservation, conservation and management of wildlife and setting up of a National Park in the Islamabad Capital Territory. It is settled law that a special law prevails over a general law. Reliance is placed on the case of "State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others" [2017 SCMR 999]. As noted above, the Rules of 1983 expressly provide that the management of a zoo in the Islamabad Capital Territory is also within the domain of the Board of Management constituted under the Wildlife Ordinance of 1979 and it is one of its crucial functions.

It is declared, therefore, that the Zoo, its management and all other matters relating thereto fall within the jurisdiction and competence of the Board of management constituted under the Wildlife Ordinance of 1979.

c. Do animals have rights? Is there a duty on the part of the State and the human species to protect the wellbeing and welfare of the animal species?

6. The question as to whether or not animals possess distinct rights has been considered by the courts in various jurisdictions and the jurisprudence reflects a divergence of opinions. It would, therefore, be beneficial to briefly survey the jurisprudence that has emerged in various jurisdictions.

(a) Jurisprudence regarding the rights of animals.

(i) 'Sandra', the Orangutan

A Criminal Appeals Court in Argentina handed down a judgment in December, 2014, declaring that the Orangutan, named Sandra, had been unlawfully deprived of her freedom. Sandra was born in 1986 and a Criminal Appeals Court in Argentina held that the 29 year old orangutan, Sandra, was unlawfully deprived of her freedom. Sandra, born in captivity in 1986, had lived in a restricted area in a zoo in Buenos Aires, Argentina. It was probably the first judgment which declared the status of the Orangutan as a 'non human person'. The judgment granted the relief by treating and declaring that Orangutans had rights similar to those of the human species. The habeas corpus petition was allowed and as a consequence Sandra was freed from captivity. She was shifted and now resides in the Center for Great Apes in Florida, United States of America. This was the first case when a court recognized one of the animal species as having rights and thus its personhood.

(ii) Chimpanzee, "Cecilia"

In another landmark, jurisprudential development in November 2016, Judge Maria Alejandra Mauricio of Tercer Juzgado de Garantias in Mandoza, Argentina, ordered Cecilia, a female chimpanzee, who had lived in captivity in the Ciudad de Mandoza Zoo, to be freed. Cecilia had endured loneliness, confined in a cement cage for more than 30 years. It was argued, on behalf of Cecilia, that the latter had been illegally and arbitrarily deprived of the freedom of movement and was denied a decent life. The court, in its judgment, observed that the case involved the protection of collective good and value. It was held that the right to preservation of the natural and cultural patrimony and the right to quality of life are part of the right to the environment. It was observed and held as follows.--

"I understand that in the present case the collective good and value is embodied in the wellbeing of Cecilia, a member of the

"community" of individuals of our zoo. This because Cecilia is part of the natural patrimony (law 22.421), but also her relation with the human community -in my opinion-makes her part of the cultural patrimony of the community.

For one reason or another, her wellbeing has to do with the protection of a collective patrimony. Likewise, it is part of the quality of life of the community, the protection of that patrimony is part of the physical-emotional balance (aforementioned judgment "Morales, Victor H."), which is the same as Cecilia's wellbeing."

It was further observed by the Court as follows.-

"Cecilia's present situation moves us. If we take care of her wellbeing, it is not Cecilia who will owe us; it is us who will have to thank her for giving us the opportunity to grow as a group and to feel a little more human."

The Court recognized and acknowledged that primates and non-human legal persons possess fundamental rights that they should be studied and listed by the State authorities. The relevant portion is reproduced as follows.-

"Animals must have fundamental rights and the applicable legislation in accordance with such fundamental rights to protect the particular situation they encounter, following the evolutionary degree that science has determined they can reach. This is not about granting them the same rights humans have, it is about accepting and understanding once and for all that they are living sentient beings, with legal personhood and that among other rights, they are assisted by the fundamental right to be born, to live, grow and die in the proper environment for their species. Animals and great apes are not objects to be exposed like a work of art created by humans."

The court explicitly observed that it was not granting the great apes the rights listed in civil and commercial law nor was it the purpose to create a catalogue of the rights of great apes. It was emphasized that it was about articulating a distinct category of non-human legal persons. After declaring Cecilia as a non-human legal person, the habeas petition was granted and Cecilia was ordered to be transferred to the well known Sorocaba sanctuary in the Republic of Brazil.

(iii) "Arturo" the Polar Bear

Arturo was a polar bear and had lived most of his life in captivity at the Mandoza Zoo, Argentina. He was showing visible signs of depression after his companion 'Pelusa' died. Arturo, because of his condition, had become known as 'the world's saddest bear". The South American weather added to his suffering. A petition was filed for relocating him to Canada but it did not succeed because of an

adverse opinion of a panel of veterinarians. He ultimately died in the sweltering heat of Mandoza.

(iv) Orca Whales

A Court in the Netherlands was not inclined to order sending an orca whale, 'Morgan', to the waters off the coast of Norway because, in the opinion of the judge, the chances of its survival would have been bleak. However, it was allowed to be relocated for the purposes of research regarding the preservation of the species. The United States District Court, Southern District of California, ruled in a case relating to five orca 'killer whales' that the Thirteenth Amendment applied only to humans and thus relief could not be granted to a non human. The judge, despite holding that the orca whale lacked legal standing to bring a Thirteenth Amendment claim, nonetheless observed that 'it is not to say that animals have no legal rights, as there are many states and federal statutes affording redress to Plaintiffs, including in some instances, criminal statutes that "punish those who violate statutory duties that protect animals". The five orca whales, Tilikum, Katina, Corky, Kasatka and Ulises, were in possession of the Sea World at the entertainment centre in Orlando, Florida. It was the case of the Next Friend that the orca whales 'were born free and lived in their natural environment until they were captured and torn from their families'. It was contended that retention of the five whales in captivity violated the slavery and involuntary servitude provisions of the Thirteenth Amendment. The relief was denied on the sole ground that the five orca whales lacked locus standi because they were not human persons.

(v) Training and Exhibition of animals

The Kerala High Court in the case titled 'N. R. Nair and others v. Union of India and others' [AIR 2000 Kerala 340] observed that legal rights should not be the exclusive reserve of humans. The validity of a notification banning the training and exhibiting of five animals i.e. bears, monkeys, tigers, panthers and dogs was challenged by the Indian Circus Federation. The relevant portion of the judgment is reproduced as follows.-

"Though not homosapiens, they are also beings entitled to dignified existences and humane treatment sans cruelty and torture. In many respects, they comport better than humans, they kill to eat and eat to live and not live to eat as some of us do, they do not practice deception, fraud, or falsehood and malpractices as humans do, they care for their little ones expecting nothing in return, they do not proliferate as we do depleting the already scarce resources of the earth, for they practice sex restraint by seasonal mating, nor do they inhale the lethal smoke of tobacco poisoning the atmosphere and inflicting harm on fellow beings. All animals except the very lowest exhibit some degree of intelligent behaviour, ranging from learned responses to complex reasoning. Many believe that the lives of humans and animals are equally valuable and that their interests should count equally. Their contribution to the health of human is

invaluable once it is remembered that nearly every advance in health care and combating human diseases has been based on animal research. Animals also provide models for the study of human diseases. New drugs are tested on animals to help determine their potential for causing cancer or other diseases or for harming embryos and fetuses in the womb. Therefore, it is not only our fundamental duty to show compassion to our animal friends, but also to recognize and protect their rights."

(vi) Right to life under Article 21 of the Constitution of India extended to animals.

The above observations by the High Court of Kerala were further developed by the Supreme Court of India in the case titled 'Animal Welfare Board of India v. A. Nagaraja and others' [(2014) 7 Supreme Court Cases 547]. The treatment of animals during the festival of 'Jallikattu' celebrated in Tamil Nadu and bull cart races in the province of Maharashtra were challenged. The Supreme Court of India held as follows.-

"When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which it cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks".

(vii) 'Sundar' the Elephant

The High Court of Bombay in the case titled 'Dr Manilal v. Valliyate, The Constituted Attorney of people for Ethical treatment of animals v. The State of Maharashtra through Chief Wildlife Warden, etc.' (Writ Petition No.2662/2013) decided a grievance relating to the welfare of Sundar, an elephant, who had been kept in captivity by a private citizen and the Wildlife Warden had issued an ownership certificate in this regard. It was alleged that Sundar was being treated in a cruel manner. The High Court pressed into service the doctrine of public trust and ordered relocation of Sundar in order to safeguard its welfare and from being treated cruelly.

(viii) 'Sonu' the elephant

The High Court of Chhattisgarh dealt with the case of a wild elephant named Sonu. The latter was detained and kept in captivity because, allegedly, it had killed five persons, injured others and had caused damage to crops. In its judgment, dated 18-08-2017, passed in Writ Petition No.06/2016, titled 'Nithin Singvi v. Union of India through Secretary Ministry of Environment and Forests, and others' the High Court acknowledged the need to protect wild animals from being treated in a cruel manner. The Court recognized Sonu's right to live in its natural habitat but left the matter of his release to the authorities after assessing his health condition.

(ix) Chimpanzees- Kiko, Tommy, Hercules and Leo

The New York Supreme Appellate Division, in June 2017, did not grant petitions seeking the release of four chimpanzees, namely Kiko, Tommy, Hercules and Leo. The Court held that the relief by way of habeas had a nexus with the entitlement to enjoy fundamental rights. In the opinion of the Court, animals had a different status and they lacked the capacity to possess legal rights e.g the right to bodily integrity and liberty. It was held that rights stem from personhood and only a 'person' had legal entitlements because the latter could be held accountable for his/her actions. The emphasis of the Court was on whether animals had the pre requisite of claiming a right i.e. 'personhood'. In the opinion of the court, unlike human beings, chimpanzees could not bear any legal duties, submit to social responsibilities or be held accountable for their actions and, therefore, they were incapable of bearing any legal responsibility and societal duties. It was on this basis that the court held that legal rights could not be conferred upon the four chimpanzees and consequently the fundamental right to liberty could not be claimed by seeking a writ of habeas corpus. In May 2018 permission to appeal the decision was denied and Judge Eugene Fahey, issuing his concurring opinion, had observed that ' the inadequacy of the law as a vehicle to address some of our most difficult ethical dilemmas is on display in this matter'. He further observed as follows.-

"In the interval since we first denied leave --- ---, I have struggled with whether this was the right decision. Although I concur in the Court's decision to deny leave to appeal now, I continue to question whether the Court was right to deny leave in the first instance. The issue whether a non human has a fundamental right to liberty protected by the writ of habeas corpus is profound and far reaching. It speaks of our relationship with all the life around us. Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a 'person', there is no doubt that it is not merely a thing"

(x) The Constitutional Court of South Africa

The Constitutional Court of South Africa, in its judgment dated 08-12-2016, titled 'National Society for the Prevention of Cruelty to Animals v. Minister of Justice and Constitutional Development and another' {[2016] ZACC 46}, referred to the jurisprudence developed by the courts in South Africa relating to animal rights, their welfare and well being. It was observed that "the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals." The Constitutional Court recognized the nexus between guarding the interest of animals and the constitutional values.

(xi) "Happy" the elephant in Bronx Zoo.

As reported, 'Happy' was one of seven elephants brought to the United States. In 1977 Happy was relocated to a circus and later sent to the Bronx Zoo. His companion 'Grumpy' was euthanized in 2002 and since then he has been living in captivity in isolation. The Nonhuman Rights Group filed a petition seeking a writ of habeas for the release of Happy from the Bronx Zoo. During the proceedings, Happy had passed the 'mirror self recognition test' and thus established self awareness as a cognitively advanced living specie. Judge Alison Tuitt was sympathetic to the plight of Happy and recognized the latter as an intelligent being with advanced analytical abilities akin to human beings. The Court regretfully denied the habeas corpus relief because it felt bound to follow the earlier decisions of the New York Court of Appeals. The relief was denied because 'Happy' was not a person and thus lacked the locus standi required for the grant of habeas corpus relief.

(xii) The Lahore High Court; Should constitutionally guaranteed rights be extended to animals?

The learned Lahore High Court, in the case titled 'Muhammad Arif v. S.H.O. City Police, Depalpur and 5 others' [PLD 1994 Lahore 521],while granting a petition of habeas corpus in relation to two persons found to be illegally detained along with their cattle, had raised the question of extending the constitutionally guaranteed right to animals. It was observed as follows.-

"As, per Article 4 of the Constitution every citizen has the inalienable right to be treated in accordance with law and no action detrimental to, life, liberty, body, reputation or property can be taken except in accordance with law. Under Article 24 of the Constitution no person is to be deprived of his property, except in accordance with law. Equality before law and equal protection of law is guaranteed to every citizen, under Article 25. If the Constitution is guaranteeing such wide protection to the citizens, why not the same protection to the cattle and animals of the country?"

(xiii) The High Court of Sindh declares cruel treatment of animal species as illegal.

The High Court of Sindh in the case titled 'Ghulam Asghar Gadehi and others v. Senior Superintendent of Police Dadu and 4 others' [PLD 2018 Sindh 169] declared that the traditional and cultural sport of donkey cart racing and bull cart racing fell within the ambit of the definition of 'cruelty' under the Pakistan Cruelty to Animals Act 1890.

(xiv) 'The Houbora Bustard' Supreme Court

The august Supreme Court, in the case titled 'Province of Sindh and others v. Lal Khan Chandio and others' [PLD 2016 SC 48], declared that the giving of a licence or permit to hunt the Houbara Bustard was illegal. The apex Court had elaborately discussed the reasons and wisdom for conserving and protecting the migratory bird and

had explained the nexus with the environment and right to life of humans. It was observed as follows.-

"The fundamental right to life and to live it with dignity (Articles 9 and 14 of the Constitution) is one lived in a world that has an abundance of all species not only for the duration of our lives but available for our progeny too. It has now been scientifically established that if the earth becomes bereft of birds, animals, insects, trees, plants, clean rivers, unpolluted air, soil it will be the precursor of our destruction/extinction. The United Nations World Commission on Environment and Development, chaired by the former Norwegian Prime Minister Gro Harlem Brundtland, published the report "Our Common Future" in 1987 (also known as the 'Brundtland Report') which was the forerunner of innumerable reports and treaties, including CITES and CMS."

A larger Bench, consisting of five honourable judges of the Supreme Court, heard and decided the review petitions vide judgment titled 'Government of Punjab and others v. Aamir Zahoor ul Haq and others' [PLD 2016 SC 421]. The above mentioned judgment was set aside by a majority of four to one on the sole ground that complete or perpetual prohibition of hunting of the species was not intended, either under the relevant enacted laws enforced in Pakistan nor by the international treatise to which the State is one of the signatories. However, the need to protect and preserve the species, having regard to the eloquent observations reproduced above, were reaffirmed. The majority judgment emphasized the importance of the adequacy and propriety of the regulatory measures for ensuring the sustainability of achieving the noble object of preserving, protecting and managing wildlife. The majority judgment, in essence, endorsed the observations made in the judgment under review regarding the dependence of the right to life on jealously protecting the vulnerable species i.e. the Houbora Bustard.

(b) Universal Declaration of Animal Rights.

In October 1978 a proclamation regarding the Universal Declaration of Animal Rights was issued at the headquarters of the United Nations Educational Scientific and Cultural Organization. It is an important document in the sense that it proposes the recognition of the rights of a living species other than humans. It acknowledges that animals have a life and that they are sentient beings having some characteristics that are shared by humans. It univocally proposes to declare that animals have rights and that disregard and contempt for such rights would constitute crimes committed by humans against nature and animals. Article 1 of the Declaration provides that all animals are born with an equal claim on life and the same rights of existence, while Article 2 recognizes their entitlement to be respected. Sub-Article (2) of Article 2 explicitly declares that man, as an animal species, shall not arrogate to itself the right to exterminate or inhumanely exploit other animals and that it is its duty to use knowledge for the welfare of animals. Article 3 declares that no animal shall be ill-treated or shall be subjected to

cruel acts and that if an animal has to be killed, this must be instantaneous and without distress. Articles 4 and 5 recognize the right of wild animals to liberty in their natural environment while animals of species living traditionally in a human environment to have the right to live and grow at the rhythm and under the conditions of life and freedom peculiar to their species.

(c) The Treatment of Animals by various religions, particularly in the light of the injunctions of Islam.

The emphasis and importance of 'life' and the protection of living beings cannot be overstated in every religion and faith. Be it Islam, Judaism, Christianity, Buddhism, Hinduism or any other religion, there is no dispute that 'life' is the most precious and superior creation of the Creator. There is consensus amongst all religions of the world that animals are 'sentient beings' i.e able to perceive and feel. However, the primary sources of law of Islam will be discussed in more detail because ninety seven percent of the population in Pakistan are its followers i.e Muslims. Moreover, Article 31 of the Constitution and its preamble expressly provides that 'steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam'. The principles of interpretation and the tools for deriving a 'Hukam', command or Shariah, from the recognized sources such as the Quran or Sunnah (Traditions of the Holy Prophet (SAW)) is based on the premise or foundation of 'preservation of life'. Life is most important because it is the best creation of Allah, the Creator. 'Life' is not restricted to human life but includes all forms of life, whether a breathing animal or a plant. Human has been made superior to other forms because of its cognitive attributes, intelligence and the ability to think and reason. The other forms of life are not inferior but each have a specific and distinct purpose.

There are several Verses in the Holy Quran which explicitly relate to animals and some are as follows.-

"And He created cattle; you derive warmth from them and various other uses; and from them you obtain food Surrah An-Nahl 16:5

"And they carry your loads to many a place which otherwise you would be unable to reach without great hardship; Verily your Sustainer is most compassionate, a dispenser of justice An-Nahl 16:7

"And it is He who has created horses, mules, and donkeys, for you to ride and as an adornment; And he has created other things of which you have no knowledge. "Surrah An-Nahl 16:8

"We have made animals subject to you, that ye may be grateful. "Surrah Al Haj 22:36

"Although there is no animal that walks on earth and no bird that flies on its two wings which is not God's creature like yourself."Surrah Al-Anam 6:38

"Seest thou not that it is Allah Whose praise all beings in the heavens and on earth do celebrate, and the birds (of the air) with wings outspread? Each one knows its own (mode of) prayer and praise, and Allah knows well all that they do. "Surrah An-Noor 24:41

"transgress not in the balance, and weigh with justice, and skimp not in the balance. . .earth, He set it down for all beings."Surrah Ar-Rahman 55:8-10.

The sacredness of 'life' in the form of animal species and the respect it deserves is explicit from the above verses. Likewise, there are an overwhelming number of Sunnah/Ahadith reported in various credible compilations of hadith such as Sahih al-Bukhari, Sahih Muslim, Sunan Abu dawood, Jami al-Timidhi, Sunan ibn Majah etc., which highlight the rights of the animal species and the duties of humans to protect them from harm, unnecessary suffering and pain. It also unambiguously shows the respect and care displayed by the Holy Prophet (SAW) for the animal species. It manifests respect for the creation of Allah in one of its best forms i.e. life. Some reported Ahadith are as follows;

"The worst of shepherds is the ungentle, who causes the beasts to crush or bruise one another."

"There is a reward for helping any living creature"

"The Holy Prophet (SAW) passed by a man who was dragging his sheep by its ear. He (SAW) said 'leave its ear and hold it by the side of the neck because pulling an animal by ear was painful"

"It was reported by Abdur Rehman ibn Uthman that when a physician consulted the Prophet (SAW) about using frogs in medicine, he forbade him from killing them"

"On one occasion the Holy Prophet (SAW) narrated a story that a man felt very thirsty while travelling. He came across a well and went down to quench his thirst. When he came out he saw a dog panting and licking mud. He went down again and fetched water for the dog because it was thirsty. People asked the Prophet (SAW) 'O Allah's Messenger is there a reward in serving the animals. He (SAW) replied, 'Yes there is reward for serving any living being"

"You will not have secure faith until you love one another and have mercy on those who live upon the earth."

"Fear God in these mute animals, and ride them when they are fit to be ridden, and let them go free when . ..they (need to) rest."

"There is no man who kills a sparrow or anything beyond that, without its deserving it, but God will ask him about it."

"The grievous things are: shirk (polytheism); disobedience to parents; the killing of breathing beings . ""

"May God curse anyone who maims animals."

"Whoever is kind to the creatures of God is kind to himself."

"It was narrated by Abu Hurariah that the Messenger of Allah forbade killing shrikes, ants, hoopoes, and frogs" while Ibn Abbass narrated that the Messenger of Allah forbade killing ants, bees, hoopoes and shrikes"

The above are some of the Quranic verses and Ahadith highlighting the importance of the animal species and the duty of care that humans owe to them. This was fourteen hundred years ago and much before the English philosopher and reformer, Jeremy Bentham, referred to the rights of animals. It is obvious that Islam regards animal species as sentient living beings and creations of Allah, who is the creator. It is for this reason that animals deserve care, compassion and respect. Killing or harming an animal unnecessarily or inflicting unnecessary pain and suffering is forbidden. It is inconceivable that, in a society where the majority follow the religion of Islam, that an animal could be harmed or treated in a cruel manner. All religions acknowledge the rights of the animal species and the duty of humans to protect them from being harmed or treated in any manner that would subject them to unnecessary pain and suffering.

(d) The Prevention of Cruelty to Animals Act, 1890

The Act of 1890 was promulgated with the object of preventing cruelty to animals. Section 2(1) defines an 'animal' as meaning any domestic or captured animal. Section 3 provides the penalty for causing cruelty to animals or sale or their killing. Section 3(a) makes overdriving, beating, or otherwise treating any animal so as to subject it to unnecessary pain or suffering illegal. The person found guilty of treating an animal in such a manner is liable to be sentenced with imprisonment besides the imposition of a fine. The expression 'or otherwise treats an animal so as to subject it to unnecessary pain and suffering' has a very wide meaning and scope. Moreover, the statute has been enacted for the benefit of the animal species in order to safeguard against any treatment that would subject any animal to unnecessary pain or suffering. It is settled law that beneficial statutes must not be construed too restrictively and rather should be given the widest possible interpretation. The Zoo, for example, merely serves the purpose of displaying or exhibiting its animals to the visitors. The animals are held in captivity in such enclosures and conditions which, instead of providing an opportunity to study the animals, must be adversely affecting the visitors. There does not appear to be much awareness in society, judging by the conduct of the visitors. The Zoo does not make any positive contribution whatsoever to the society. With the advancement of technology there are far better and more informative

opportunities to observe and gain knowledge about the animal species. Above all, and as already held, the Zoo definitely does not provide facilities nor has the resources to be able to provide for the behavioural, social and physiological needs of the animals, who have been deprived of their natural habitats and have been kept in shockingly deplorable conditions. This Court, therefore, has no hesitation in declaring that the animals in the Zoo have been subjected to unnecessary pain and suffering. The condition of the Zoo, described in the various reports, speaks volumes for the distress, pain and suffering of all the animals. The authorities responsible have thus exposed themselves to be proceeded against under the Act of 1890.

(e) Sections 428 and 429 of the Pakistan Penal Code, 1860 (hereinafter referred to as the 'P.P.C.')

Section 428 provides that whoever commits mischief by killing, poisoning, maiming or rendering useless any animal of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Likewise section 429 prescribes a punishment of imprisonment of either description for a term which may extend to five years with fine or with both against a person who commits mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof or any other animal of value of fifty rupees or upwards. The expression 'mischief' has been defined in section 425 as wrongful loss or damage to the public or any person with the intent to cause or knowing that it will be likely to cause destruction to any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously. Explanation 1 explicitly clarifies that it is not essential to the offence of mischief that the offender intends to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause or knows that he is likely to cause wrongful loss or damage to any person by injuring any property whether it belongs to that person or not. The animals in the Zoo are public property and the aforementioned offences could be invoked if the ingredients stand fulfilled.

(f) The right to life of humans under Article 9 of the Constitution and its dependence on the protection, preservation and care of animals.

The existence of the human species on this planet is dependent on other living organisms such as plants and animals. The habitats of animals are equally essential. The human civilization and its destruction of the habitat, ecosystems and obliteration of species has threatened the biodiversity of the planet. The United Nations has warned that if the wildlife is not protected then its extinction would expose the human race to the risk of facing extinction. Wildlife is the most essential foundation of healthy ecosystems. The threat of climate change and its ensuing devastating consequences for the human race can only be avoided if environmental

degradation and damage to ecosystems and biodiversity could be stopped. Protection and preservation of wildlife species is a precondition for meeting the challenges that stem from damage to the ecosystems and degradation of the environment. The welfare, wellbeing and survival of the animal species is the foundational principle for the survival of the human race on this planet. Without the wildlife species there will be no human life on this planet. It is, therefore, obvious that neglect of the welfare and wellbeing of the animal species, or any treatment of an animal that subjects it to unnecessary pain or suffering, has implications for the right of life of humans guaranteed under Article 9 of the Constitution. The Constitution of the Islamic Republic of Pakistan, 1973 guarantees the right to life of every person. The right to life is the most fundamental amongst human rights. The august Supreme Court in the case titled "Ms. Shehla Zia and others v. WAPDA" [PLD 1994 SC 693] has observed and held that the word life is very significant because it covers every facet of human existence. "Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally". Cruel treatment and neglect of the wellbeing of an animal in captivity, or exposing it to conditions which do not meet the animals behavioural, social and physiological needs, is an infringement of the right to life of humans. There is also another important aspect related to the right to life and cruel treatment of animals. Several credible research projects have been conducted, showing compelling evidence of violent crimes and cruelty to animals. Maltreatment of animals could have long term negative consequences. Experts are of the opinion that animals can play a positive role in the development of human personality. Researchers have found profound influences of a positive relationship between an animal and a child. The child tends to develop more empathy towards fellow human beings. In a nutshell, the relationship of the treatment of animals and the right to life of humans makes it an obligation of the State and its authorities to jealously guard against cruel and illegal treatment of animals. Protecting, preserving and conserving the animal species and preventing it from harm is a constitutional obligation of the State and the authorities.

Conclusion:- Status and rights of animals in the light of the above discussion.

7. After surveying the jurisprudence developed in various jurisdictions it has become obvious that there is consensus that an 'animal' is not merely a 'thing' or 'property'. There is also no dispute regarding the fact that no animal deserves to be subjected to cruel treatment. Animals have emotions and 'Happy' had also successfully cleared the mirror test. Directly or indirectly the rights of the animals are also acknowledged. Some courts have declared particular animal species as non-human persons while others have gone to the extent of granting them the same rights as those of the human species guaranteed under the constitution. The courts in the United States have gone to the extent of implicitly recognizing

animals to be other than a mere 'thing' but the relief of habeas corpus was denied on the ground that they could not be treated as humans and that lack of personhood deprived them from having the locus standi to the grant of a writ. No constitution has been framed in the context of 'life' and, therefore, it gives rise to a conflict and confusion while granting relief to a form of life other than a human. As already noted, all the constitutions have been framed by humans to organize and regulate their own species. Constitutions refer to either a 'person' or a 'citizen' but not to 'living beings'. Consequently, the writs are also with reference to a human or a person. There are writs other than habeas corpus, such as prohibition and mandamus. An infant, a comatose or a mentally challenged person is not different to an animal. It has never been the case of those arguing on behalf of animals to recognize that they have the same rights enjoyed by the human species. No relief has ever been sought on behalf of any animal to grant it freedom by releasing it from a zoo and thus allowing its free access to public places meant for humans. In the case in hand it has been argued that the animals in the Zoo are living in captivity and the conditions are such that the treatment has subjected them to unnecessary pain and suffering. Do the animals have legal rights? The answer to this question, without any hesitation, is in the affirmative. The Black's Law Dictionary (Sixth Edition) has defined 'Legal Right' as 'Natural rights, rights existing as a result of contract and rights created or recognized by law'. The Eleventh Edition defines the expression 'as a right related to or recognized by law'. The human rights are inherent because they stem from the attribute of being 'alive'. Life, therefore, is the premise of the existence of a right. Whether human rights or rights guaranteed expressly under the Constitution, they all have a nexus with 'life'. An object or thing without 'life' has no right. A living being on the other hand has rights because of the gift of 'life'. An animal undoubtedly is a sentient being. It has emotions and can feel pain or joy. By nature each specie has its own natural habitat. They require distinct facilities and environments for their behavioural, social and physiological needs. This is how they have been created. It is unnatural for a lion to be kept in captivity in a restricted area. To separate an elephant from the herd and keep it in isolation is not what has been contemplated by nature. Like humans, animals also have natural rights which ought to be recognized. It is a right of each animal, a living being, to live in an environment that meets the latter's behavioral, social and physiological needs. The Act of 1890 in fact recognizes the animals natural right not to be treated in a manner that subjects it to unnecessary pain and suffering. It is the constitutional and statutory obligation of the State and its functionaries to ensure that these rights are not infringed. It is also a natural right of every animal to be respected because it is a living being, possessing the precious gift of 'life'. Humans cannot arrogate to themselves a right or prerogative of enslaving or subjugating an animal because the latter has been born free for some specific purposes. It is a natural right of an animal not to be tortured or unnecessarily killed because the gift of life it possesses is precious and its disrespect undermines the respect of the Creator. Moreover,

as discussed above, the right to life of humans is dependent on the welfare, wellbeing, preservation and conservation of all animal species. Any treatment in violation of the provisions of the Act of 1890, or subjecting an animal to unnecessary pain or suffering, is an infringement of the right to life guaranteed under Article 9 of the Constitution. The destruction and loss of habitat also violates the fundamental right to life of a human. The State is responsible to ensure that no animal is treated in violation of the provisions of the Act of 1890 and the Wildlife Ordinance 1979. In order to refrain an authority from doing anything not permitted by law or to compel them to do anything the law requires them to do, this Court is vested with the jurisdiction to issue a writ of prohibition or mandamus, as the case may.

8. In view of the above discussion, it is declared and directed as follows.-

i. The Zoo i.e. the Marghazar Zoo, Islamabad does not have the facilities or resources to meet the behavioural, social and physiological needs of the animals kept in captivity under inappropriate and illegal conditions.

ii. The animals held in captivity in the Zoo have been kept in conditions that tantamount to subjecting them to unnecessary pain and suffering and thus in violation of the provisions of the Act of 1890 and the Wildlife Ordinance of 1979. There are neither adequate facilities nor resources to provide living conditions that would meet the behavioural, social and physiological needs of the animals.

iii. Kaavan, the elephant, has been treated cruelly by subjecting him to unimaginable pain and suffering for the past three decades and his continued captivity in the circumstances would expose the authorities to criminal consequences under the Act of 1890. The pain and suffering of Kaavan must come to an end by relocating him to an appropriate elephant sanctuary, in or outside the country.

iv. The Chairman of the Board of Wildlife Management, constituted under the Wildlife Ordinance of 1979 will forthwith make arrangements, preferably in consultation with and the consent of the High Commissioner of Sri Lanka to relocate Kaavan to a suitable sanctuary within thirty days. The Board may seek assistance of experts and international entities/organizations in this regard.

v. The Board constituted under the Wildlife Ordinance of 1979 shall relocate all the remaining animals to their respective sanctuaries within sixty days from the date of receiving a certified copy of this judgment.

vi. The Board constituted under the Wildlife Ordinance of 1979 will forthwith take over the management of the Zoo. The Corporation and the Chief Commissioner, Islamabad Capital Territory will assist the Board till the animals have been relocated.

vii. The Minster in Charge of the Ministry of Climate Change and members of the Board shall be jointly and severally liable for the welfare and wellbeing of each animal till their relocation to their respective sanctuaries.

viii. The Board shall not keep any new animal in the Zoo till a reputable international agency/organization, specializing in matters relating to zoological gardens, has certified that facilities and resources are available to provide for the behavioural, social and physiological needs of each species of animals.

ix. The Board constituted under the Wildlife Ordinance of 1979 will inspect any other zoo established in Islamabad Capital Territory to ascertain the treatment of animals and take measures in accordance with law.

x. The Black Bear, confiscated by the Board under the Wildlife Ordinance of 1979, will continue to stay in the Bear Sanctuary because it was in illegal possession in the Islamabad Capital Territory.

xi. The Board will be assisted by the Chief Commissioner, Islamabad Capital Territory and the Inspector General Police in order to enforce the provisions of the Wildlife Ordinance 1979.

xii. The Board shall ensure and take appropriate measures to enforce the provisions of the Wildlife Ordinance 1979 and the Act of 1890 so that no animal is treated in a manner that subjects it to unnecessary pain and suffering.

xiii. The Federal Government may consider advising the respective provincial governments to include in the curriculum of Islamic Studies the teachings of Islam regarding the importance of taking care of animals, their welfare and wellbeing, as highlighted in the Ahadiths and Quran. The media may also consider educating and informing the general public regarding the manner in which creation of Allah i.e animal species ought to be treated.

xiv. The Board is the competent authority to prescribe a policy and mechanism regarding stray dogs. It is expected that the Board while formulating the policy will have regard to the best practices observed internationally and the injunctions of Islam which teaches treating animals in humane manner.

xv. This Court exercises restraint in the contempt matter despite being satisfied that an attempt was made to frustrate the implementation of the order passed by this Court. The two officials who were issued show cause notices do not appear to have acted on their own. They were the only officials who had empathy for the helpless animals.

9. The constitutional petitions are allowed and disposed of in the above terms.

Annexure 'A'

S. No.	Petition number and title
1.	W.P. No. 1430/2019 titled 'Dr. Nadeem Omar v. Metropolitan Corporation Islamabad and 2 others'
2.	W.P. No. 4693/2018 titled 'Faryal Nawaz v. Metropolitan Corporation Islamabad and 2 others'
3.	Crl, Org. No. 182/2019 titled 'Dr. Nadeem Umar Tarar v. Rana Tahir and another'

MH/80/Isl. Petitions allowed.

Case 9: Sheikh ASIM FAROOQ---Petitioner

P L D 2019 Lahore 664

Before Jawad Hassan, J

Sheikh ASIM FAROOQ---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

Writ Petition No.192069 of 2018, decided on 30th August, 2019.

Dates of hearing: 5th April, 18th, 20th, 24th, 26th, 27th July, 2018, 28th, 31st January, 2019, 11th, 19th, 27th February, 2019, 8th, 21st and 30th May, 2019.

JUDGMENT

JAWAD HASSAN, J.---Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner has sought directions to the Respondents to, inter alia:

(a) appraise as to how the National Climate Change Policy, 2012, the National Forest Policy, 2015 and the Forest Policy Statement, 1999 have been implemented to increase the forest cover in Pakistan and Punjab;

(b) implement the Forest Act, 1927 (the "Forest Act") and the Punjab Plantation and Maintenance of Trees Act, 1974 (the "Trees Act") by planting trees;

(c) provide reasons for drastic reduction in forest cover in Pakistan particularly in Punjab,

(d) increase the forest cover to reach the minimum satisfactory standards of 20-25% necessary for a balanced economy;

(e) present a time-line map for the said purposes, and

(f) initiate appropriate proceedings against the delinquent officers who have failed to discharge their duties.

2. At the outset, Messrs Saima A. Khawaja and Mehnaz Shiraz, Advocates filed an application for impleading Syeda Zahra Gilani, Ambreen Khurram Zafar and Zonaira Aziz Rathore. Aforementioned ladies are members of civil society and are running a pro bono publico organization under the name of "Go Green Lahore" (GGL). Mr. Mohammad Azhar Siddique, Advocate also filed an application for impleading Abdullah Malik in the array of the Petitioners in this petition; who is also member of civil society and is involved in various public interest issues, including restoration of forests in their original condition. Mr. Sheraz Zaka, Advocate also filed an application on behalf of Human Voice to become as the Petitioner in this petition. The learned counsel for the Petitioner had no objection on acceptance of these applications, and therefore, abovestated applications were allowed.

3. It may also be noted that learned counsel for the Petitioner requested to implead certain government departments including Planning and Development Department; Punjab Environmental Protection Department; Housing and Urban Development Department; Local Government and Community Development Department; Cooperative Department, Lahore Development Authority ('LDA') and Defense Housing Authority ('DHA') as the Respondents in this petition, and his request was allowed. Mr. Ahmad Rafay Alam, Advocate filed an application on behalf of activist namely Amer Azam Bakhat to become as the Respondent in this petition. The Petitioner, therefore, filed amended petition by including the names of these Respondents; and notices were issued to the newly added Respondents to file report and parawise comments.

I. PETITIONERS' ARGUMENTS

4. The learned counsel for the Petitioner submits that the Petitioner is a practicing advocate and filing this constitutional petition seeking, inter alia, a writ of mandamus to the Respondents for the implementation of the law and the above mentioned policies, and for enforcement and protection of his fundamental rights guaranteed under Article 9 (right of life liberty), Article 14 (right of dignity), Article 26 (right of access to public places of entertainment) and Article 38(b) (provision of available leisure places) of the Constitution. He submits that Government should implement the Forest Act, the Trees Act, the National Climate Change Policy, 2012,

the National Forest Policy, 2015, the Forest Policy Statement, 1999, and the Punjab Forestry Sector (Forests, Watershed, Rangelands and Wildlife) Policy, 1999 because forest area in Pakistan is decreasing rapidly over a year with massive percentage and now as per report, is only 1.9%. He states that trees in forests and other natural resources are covered under the Doctrine of Public Trust and the Government ought to protect them for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. He adds that the government's inaction is clearly seen by not protecting the existing forests and trees with massive cutting and also their lack of commitment in planting trees despite of mandatory requirement of Section 3 of the Trees Act. The learned counsel for the Petitioners in their respective petitions also submitted their written arguments and reiterated the contents of the petitions.

5. The learned counsel for the Petitioners further submits that the concept of public trust doctrine in protecting the natural resources has fully been elaborated in "SINDH INSTITUTE OF UROLOGY AND TRANSPLANTATION v. NESTLE MILKPAK LIMITED AND OTHERS "(2005 CLC Karachi 424), which was upheld by the learned Division Bench in "NESTLE MILKPAK LTD v. SINDH INSTITUTE OF UROLOGY AND OTHERS" (PLD 2007 Karachi 11). Further contends that Hon'ble Supreme Court of Pakistan in "GENERAL SECRETARY SALT MINERS LABOUR UNION (CBA) KHEWRA, JHELUM v. THE DIRECTOR, INDUSTRIES and MINERAL DEVELOPMENT PUNJAB LAHORE" (1994 SCMR 2061) has held that the right to have unpolluted water is the right of every person wherever he lives. They further argued that it is the fundamental right of every citizen to live in clean atmosphere and relied upon the landmark judgment of Hon'ble Supreme Court of Pakistan reported as "MS. SHEHLA ZIA AND OTHERS v. WAPDA "(PLD 1994 SC 693). They also relied upon Suo Motu Case No.13 of 2009 (PLD 2011 SC 619) wherein it has been held that "right to life implies the right to food, water, decent environment, education, medical care and shelter, thus fundamental right cannot be snatched away or waived off pursuant to any agreement". They submit that Hon'ble Supreme Court took suo motu action in NEW MURREE PROJECT (2010 SCMR 361), because of grave environmental hazards by destroying 5,000 acres of forest and adversely affecting the annual rainfall in Islamabad, with the result that the supply of water to the nearby dams was depleted. In 2010, the Supreme Court decided the case with directions that need was to sensitize general public to fundamentals of sustainable development so as to achieve goal of healthy environment, not only for present population but also for future generations. As the project had been disbanded, therefore, there was no threat of environmental hazard in the area on account of the project, thus no further action was called for in the proceedings.

6. They further argued that the Respondents are not adhering to their own forest and climate change policies which is in violation of case law reported in "DEWAN SALMAN FIBRE LTD. v. FEDERATION

OF PAKISTAN AND OTHERS "(2015 PTD 2304 Islamabad), "NATIONAL BANK OF PAKISTAN v. IFTIKHAR RASOOL ANJUM AND OTHERS" (2017 PLC (C.S.) 453 Lahore). It was held in "BAHADUR KHAN AND OTHERS v. FEDERATION OF PAKISTAN THROUGH SECRETARY M/O FINANCE, ISLAMABAD AND OTHERS" (2017 SCMR 2066) that great importance is attached to government adhering to sovereign commitments made by it, whether in form of statutory orders or notifications issued by it or in the shape of policies announced by it. Commitment made on behalf of government should neither be lightly disregarded nor deliberately ignored. Orderly development of a civilized society requires that citizens should be entitled to place implicit faith and confidence on representations which are made by or on behalf of duly constituted governmental authorities. They state that the Forestry, Wildlife and Fisheries Department (the "Department") is duty bound to administer the Trees Act under the Punjab Rules of Business 2011 (the "Punjab Rules of Business"), Schedule 2, Item No.18 (vii).

7. The learned counsel for the Petitioners also submits that recently in the Cutting of Trees for Canal Widening Project Lahore (2011 SCMR 1743), the Hon'ble Supreme Court held that green belt around both sides of the canal is a public trust resource and cannot be converted into private or any other use other than public purpose. Thus widening of the road is a public purpose and a minimum area is being affected and the remaining green belt/public park is much larger because said public park has been recommended by the Mediation Committee to be declared as Heritage Park and recommendations of the Committee have been accepted by the Provincial Government in totality.

8. Lastly, it has also been submitted that Respondents have failed in performing their obligations outlined in laws and policies, in safely managing, conserving, sustaining, maintaining, protecting and growing forests and as a result the current state of affairs is now prevalent, where the forests in Pakistan and in Punjab are close to extinction. Further, for decades, there has been no improvement or enlargement of forest areas or plantation of trees in private areas, and that the Respondents have failed to regulate as to what type of trees are to be planted in a particular locality that would be environment friendly, provide maximum canopy and produce more oxygen.

II. RESPONDENTS' ARGUMANTS

9. At the outset, notices were issued to the Respondents to file report and parawise comments by adverting to the assertions made by the Petitioners in the light of judgments of the superior Courts. The Departments were also directed to state what steps had been taken so far to implement the laws for plantation of the trees.

A. Lahore Development Authority

10. Mr. Waqar A. Sheikh, Advocate/Legal Advisor of LDA appeared along with Ms. Amina Imran Khan, Director General, LDA and stated that LDA has taken some positive steps for plantation of trees under their jurisdiction. He further stated that LDA has already made Rules in year 2014, and they will file detailed reply to show their positive steps on the issue of urban forestry for massive plantation of trees under their jurisdiction. On preceding dates, he submitted that it is a matter of public importance and LDA will fully cooperate for the plantation of trees and implementation of all the relevant laws in this regard.

B. Forestry, Wildlife and Fisheries Department

11. Capt.(R) Muhammad Asif, Secretary and Mr. Shahid Rashid Awan, Additional Secretary of the Department appeared and stated that in pursuance of the previous orders of this Court, positive steps have been taken by the Government of Pakistan and the Government of Punjab: (a) for enhancing the Budget of the Department from almost one billion to twenty eight billion; (b) regarding the Forest Policy, Punjab Forest Policy, Urban and Peri-Urban Forest Policy; and (c) tree plantation campaign and actual tree plantation. They further submitted that they will seek guidance from Annexure-C Page-71 of the Punjab Urban and Peri -Urban Forest Policy, and the Registrar Cooperative and D.G. LDA have also taken action against the Societies as per Urban Policy through CEO, Urban Unit. All the efforts have been acknowledged from time to time by this Court and reflected in the previous orders dated 31.01.2019, 11.02.2019, 19.02.2019, 27.02.2019 and lastly on 08.05.2019.

12. They were further directed to prepare draft of the Urban Tree Plantation Policy as per their mandate and functions laid down in Schedule-2 of the Punjab Rules of Business. They informed the Court that the Department has submitted PC-I titled "Green Pakistan Program, Revival of Wildlife Resources in Punjab" for Green Pakistan Program along with budget of Rs.28.748 billion for eight years which has been approved by the Provincial Development Working Party (PD WP) and is under process to Ministry of Climate Change for approval from Central Development Working Party (CD WP) . They further stated that they have prepared revised Punjab Forest Policy, 2018.

13. Muhammad Tariq Naseem, Deputy Secretary (P) of the Department appeared and affirmed that PC-I has been approved by the Department with total cost of project Rs.28.748 billion for a period of eight years (2016-2024) according to which they will plant 477 million trees across the Punjab in forest as well as on private lands which will cover planting density, and the growth of trees will increase approximately by 6%.

C. The Registrar Cooperative

14. The Registrar Cooperative appeared and stated that in pursuant to the orders of this Court, they, on their own, have planted trees in the Societies and will cooperate with the Urban Unit regarding the GIS Mapping and GS Survey.

D. Environmental Protection Agency

15. Director General EPA also appeared and stated that in compliance of preceding orders of this Court, the department will examine the NOCs of the Factories mentioned in the report of Urban Unit and as per their NOC, will take action against those Factories which are not complying with the conditions of planting trees.

E. Parks and Horticulture Authority

16. Dr. Faisal Zahoor, Director General (PHA), Lahore, appeared and submitted that the department is complying with the directions of this Court passed from time to time and they will further cooperate with the Urban Unit and the Secretary Forest Department for the plantation of trees and for implementing the above mentioned policies. He assured his commitment for implementing the Punjab Urban and Peri-Urban Forest Policy.

III. CURRENT SITUATION OF TREES AND FOREST

17. The Petitioners have attached several articles and reports showing several threats to forests, trees and environment in Punjab and Pakistan. It is unfortunate, catastrophic and shocking that the forests of the country are now almost extinct or at decreasing rate. The deforestation is leading to increase in the spread of life threatening diseases. Reports from Yale School of Forestry and Environmental Studies at Yale University and School of Public Health: Center of Health and the Global Environment at Harvard University affirm the fact that deforestation is linked with rise of deadly diseases.

18. It may be noted that the National Environment Information System (NEIMS), a project of United Nations Development Programme (UNDP), had published a Research Report in 2010 detailing the environment and biodiversity and ecological zones in Pakistan from forests to mountains and threatened flora and fauna and threatened species of animals. The report suggests that deforestation rate in Pakistan is estimated at 0.2% to 0.5% annually, which is the highest in the world and accounts for 4-6% decline in its wood biomass per annum. The total natural forest cover has reduced from 3.59 million hectares to 3.32 million hectares at an average rate of 27,000 hectares annually. The natural resource is decreasing at such an alarming speed that all the forest area will be consumed within the next few years. Some of the extracts from the Research Report are as follows:

1. Pakistan is a Forest Poor Country: Only 4.72 million hectares or 5.36% of its land mass is covered with forests. Table 1.7 of the

Report suggests that there is declining forestation trend during the years 2000-2009.

2. Environmental Benefits of Trees: The value of intangible benefits is eight times greater than the tangible value of products and services of forestry sector. Many other 'intangible' benefits are derived from forest including oxygen production, watershed value, scenic benefits, ecosystem synergism and flow, and a variety of other values essential for human health and quality of life. Forests also provide a number of crucial ecosystem services, for example, their role in sequestering carbon from the atmosphere, protecting upstream watersheds, conserving biodiversity and gene-pools for future generations and in providing landscape beauty.

3. Biodiversity Conservation: 60-90% of all terrestrial species are found in forests having widespread economic and medicinal uses still unknown to mankind.

4. Forests and Carbon Sequestration: Forests are both a source of carbon dioxide (CO2) when they are destroyed or degraded and a sink when conserved, managed or planted sustainably. Forest vegetation and soils hold 40% of carbon stored in terrestrial ecosystems.

5. Forests and Water Quality: As population grows, the demand for clean drinking water becomes more acute. Besides this, need of water for agriculture, sanitation purpose, cooking needs and other uses is imperative. In Pakistan, 2 decades ago, no one had ever thought of purchasing water, but now people do purchase it, just because of depletion of forests in watersheds. Forest and plant cover are necessary to slow runoff and filter rainwater. When trees are in place, rainwater, which naturally flows downhill to the nearest stream, is slowed. Once slowed, rainwater seeps down to refill underground storage tanks or aquifers. In addition, water may be absorbed by the roots of trees and transpired by leaves so that it can cycle back for use again as rainwater. Forests prevent non-saline drinking-quality water from running off too quickly to mix with the salt water of oceans. Once salty, water takes much longer to re enter the fresh water portion of the hydrological cycle, where it is most useful to humans.

6. Forests and Soil Quality: The roots of trees hold soil in place. Fertile soil that is needed to grow crops would otherwise be washed away in rainstorms, decreasing the amount of soil available for agriculture. Rich soil transfers nutrients to food, which contributes to human health.

7. Biodiversity Conservation: The forests are one of the largest repositories of biodiversity in the world. By some estimates they contain 60-90% of all terrestrial species found on the planet. Some of these could have widespread economic or medicinal uses that are still unknown to us. The conservation of these valuable genetic

resources for future options that are yet undiscovered is thus a valuable service that forests provide.

8. Other Benefits: In addition to the above, the forests provide multiple benefits to environment, people, and animals. The list of some of such recognized benefits is as follows:

a. Forest cool air temperature by release of water vapour into the air;

b. At day time trees generate oxygen and store carbon dioxide, which helps to clean air;

c. Forest attracts wild life and offer food and protection to them;

d. Forests offer privacy, reduce light reflection, offer a sound barrier and help guide wind direction and speed;

e. Trees offer artistic functions such as creating a background, framing a view, complementing architecture, and so on;

f. Well managed forests supply higher quality water with less impurity than water from other resources;

g. Forests help in controlling the level floods and soil erosion;

h. Forest provides different kind of wood which are used for different purposes like making of furniture, paper, and pencils and so on;

i. Forest help in giving the direction of wind and its speed;

j. Forest helps in keeping environment healthy and beautiful;

k. Forests also minimize noise and air pollution and;

l. Forest helps the scientist to invent new medicine as forest has different kinds of plants and herbs. All benefits quoted above are purely outcome of forests and cannot be derived from agriculture. If cost of these be calculated in terms of money, it will be far above the outcome/benefits of agriculture.

19. Further, following news articles are available on record to show the plight of forests and tree line in Pakistan:

1. A report published in daily "Dawn" dated 1.05.2017 describes how the timber mafia in Giglit-Baltistan operates in collusion with the Federal Government who have continued to increase the upper ceiling limit on felling of trees, resulting in massive damage to the forests. This has led to an apocalypse in the making by increase in landslides; the Attabad Lake was a result of indiscriminate logging in the area. The report states that the National Disaster Management Authority (NDMA) has declared that a mountain in district Nagar has started developing cracks and has begun to sink posing a danger to 380 households in Miacher Village; landslides

have already damaged five houses and 35 other houses have been evacuated and moved to safer locations.

2. As per report published in "Pakistan Today" dated 21.03.2017, Pakistan loses 42000 hectares or 2.1 % of forests every year.

3. A news article published in "The Nation" dated 07.11.2016, based on a study conducted by Asian Development Bank shows the forest area in Pakistan in the year 2015 was 1.9% which is rapid decline from earlier official figure of 5% as per the National Forest Policy, 2015. It further states that according to Food and Agricultural Organization, the country lost 840,000 hectare of forest cover between 1990 and 2010 and the rate of loss of forest per year is 42000 hectares per year.

4. The Express Tribune published on 25.01.2015 states that Gilgit-Baltistan has lost 50% of its forest cover in the last 20 years.

5. A report published in daily "Dawn" on 25.06.2010 suggests that Pakistan has the highest annual deforestation rate in Asia according to the latest findings of the World Wide Fund for Nature. 151,500 acres have been converted to non-forest use since partition in 1947; and 99,711 acres of forest land in Punjab Province has been converted to non-forest use which is the highest in Pakistan. The report also lists the names of the beneficiaries of deforestation which include corporations as well as influential individuals.

IV. CONSTITUTIONAL MOOT POINTS

20. In the instant public interest petition, the Petitioners have basically sought directions to the relevant ministries, departments and other authorities of the Provincial or Federal Government under Article 199 of the Constitution to plant, protect, manage, preserve and conserve the trees and forests in Punjab. The Respondents relevant departments and authorities have presented their oral and written arguments; in which they have undoubtedly admitted the importance and need to plant, protect, manage, preserve and conserve the trees and forests in Punjab and Pakistan; and have highlighted their performance in this regard.

21. Following constitutional moot points arise out of the instant petition:

A. Whether the directions can be issued to the relevant ministries, departments and other authorities of the provincial or federal government under Article 199 of the Constitution to implement the mandatory provisions of law? If yes, whether the doctrine of continuing mandamus is applicable in the instant matter?

B. Whether there exists any urban tree policy in Punjab?

C. Which authorities in Punjab are under obligation to plant, protect, manage, preserve and conserve the trees and forests?

D. What are the penalties and offences relating to the trees and forests in Punjab?

V. MAINTAINABILITY OF THE PETITION

22. Public Interest Litigation ("PIL") is a powerful tool for individuals and groups for combating illegalities, injustice and social ills which promotes and protects the larger public interest in case of violation of any fundamental rights. As long as the public interest prayed for is bona fide and not based on any vested interests, the principles of locus standi /aggrieved person are to be interpreted liberally by the Courts. Reliance in this regard is placed on "PROVINCE OF SINDH and others v. LAL KHAN CHANDIO and others "(2016 SCMR 48), "Messrs AL-RAHAM TRAVELS AND TOURS (PVT.) LTD. and others v. MINISTRY OF RELIGIOUS AFFAIRS, HAJJ, ZAKAT AND USHR through Secretary and others" (2011 SCMR 1621), "ARDESHIR COWASJEE and 10 others v. KARACHI BUILDING CONTROL AUTHORITY (KMC), KARACHI and 4 others" (1999 SCMR 2883), "Mian SHABIR ASMAIL v. CHIEF MINISTER OF PUNJAB and others" (PLD 2017 Lahore 597), "DISTRICT BAR ASSOCIATION, RAWALPINDI v. FEDERATION OF PAKISTAN and others"(PLD 2015 SC 401), "Ms. IMRANA TIWANA and others v. PROVINCE OF PUNJAB and others" (PLD 2015 Lahore 522), "HABIBULLAH ENERGY LIMITED and another v. WAPDA through Chairman and others" (PLD 2014 Supreme Court 47), "SALAHUDDIN DHARAJ v. PROVINCE OF SINDH through Secretary, Local Government Department and 4 others" (PLD 2013 Sindh 236), "JAVED IBRAHIM PARACHA v. FEDERATION OF PAKISTAN and others" (PLD 2004 Supreme Court 482), "IQBAL AHMAD DHUDHI v. FEDERATION OF PAKISTAN and 5 others" (2014 CLC 1348), "MUHAMMAD QAHIR SHAH and others v. FEDERATION OF PAKISTAN, MINISTRY OF RAILWAYS, through Secretary, Islamabad and others" (2014 YLR 2571), PLD 2010 SC 759 -- Human Rights Case Nos. 1111 of 2006, 1111 of 2007 and 15283- G of 2010. The Respondents are under a Constitutional obligation to protect the Fundamental Rights of the public at large as per judgment of Hon'ble Supreme Court reported in "MUHAMMAD YASIN v. FEDERATION OF PAKISTAN through Secretary, Establishment Division, Islamabad and others" (PLD 2012 SC 132). The Superior courts bound to protect the Fundamental Rights of citizens in exercise of jurisdiction conferred via Articles 199 or 184 (3) of the Constitution. Reliance is placed on (2011 PLC (C.S.) 1076). In the matter of: SUO MOTU CASE NO. 24 OF 2010 (Regarding Corruption in H ajj Arrangements in 2010), hence petition on behalf of public for violation of fundamental rights can be entertained by this Court.

VI. DOCTRINE OF CONTINUING MANDAMUS

23. Continuing Mandamus is a writ of mandamus issued to an authority by the High Court under Article 199 of the Constitution in general public interest asking the officer of the authority to perform its task expeditiously for an unstipulated period of time for preventing miscarriage of justice. The Doctrine of continuing

mandamus, at times also referred to as structural interdict or structural injunction, in other words, is a relief given by a Court of law through a series of ongoing orders over a long period of time, directing an authority to do its duty or fulfill an obligation in general public interest, as and when a need arises over the duration a case lies with the Court, with the Court choosing not to dispose the case off in finality. This happens in a situation which cannot be remedied instantaneously but requires a solution over a long time, at times going on for years. With this procedural innovation of the writ of mandamus or a mandatory order, the Court monitors compliance of its orders, seeking periodic reports from authorities on the progress in implementing them. Therefore, as it has been observed on 28.01.2019 that orders passed by this Court are to be complied with by different Departments, therefore, following the Doctrine of Continuing Mandamus, this writ petition was kept pending. Reliance is placed on "MALL ROAD TRADERS ASSOCIATION v. The DEPUTY COMMISSIONER, LAHORE "(2019 CLC 744).

VII. APPLICABLE LAWS ON TREES AND FORESTS

24. Under the Constitution, the subject of Forestry falls in the provincial domain of the provincial governments. The functions of the Federal Government pertaining to Forestry as per Federal Legislative List (Part-II) are limited to national planning and economic coordination, inter-provincial matters and coordination and matters incidental or ancillary thereof. The Article 151 of the Constitution and Federal Legislative List (Part-I) entitles the Federal Government to regulate import and export of wood and forest products, inter-provincial trade and commerce, and trade and commerce with foreign countries. Constitutionally, implementation of international conventions and agreements related to forests is the sole mandate of the Federal Government.

A. Statutory Provisions and Fundamental Rights:

Article 9 (Right of Life Liberty):

9. Security of person

No person shall be deprived of life or liberty save in accordance with law.

Article 14 (Right of Dignity):

14. Inviolability of dignity of man, etc.

(1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence.

Article 26 (Right of Access to Public Places of Entertainment):

26. Non-discrimination in respect of access to public places

(1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

Article 38(b) (Provision of Available Leisure Places):

38. Promotion of social and economic well-being of the people

The State shall-

(a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;

(b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure; ....

Article 151 further provides:

151. Inter-Provincial trade

....

(4) An Act of a Provincial Assembly which imposes any reasonable restriction in the interest of public health, public order or morality, or for the purpose of protecting animals or plants from disease or preventing or alleviating any serious shortage in the Province of any essential commodity shall not, if it was made with the consent of the President, be invalid.

25. It is essential to note that the Principles of Sustainable Development, Precautionary Principle, Public Trust doctrine, Inter- and Intra- Generational Equity, Water Justice and Food Justice, In Dubio Pro Natura, Polluter Pays, (principles of international environmental law) are part of our jurisprudence developed by our Supreme Court.

26. Article 9 guarantees the right to life which includes the right to a clean and healthy environment. Our superior courts have interpreted the right to life to include a number of natural and legal rights under the umbrella of Article 9 such as the right to a clean environment, right to form a political party and form government, access to educational institutions and access to electricity in "Ms. SHEHLA ZIA and others v. WAPDA" (PLD 1994 SC 693) (Right to

clean environment), "ASGHAR LEGHARI v. FEDERATION OF PAKISTAN and others" (PLD 2018 Lahore 364) (right to environment/ water justice); "General Secretary Salt Miners Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development Punjab Lahore" (1994 SCMR 2061) (right to clean water), "GOVERNMENT OF BALOCHISTAN through Additional Chief Secretary v. AZIZULLAH MEMON and 16 others" (PLD 1993 Supreme Court 341) (right to access to justice), "AL-JEHAD TRUST through Raees-ul-Mujahidin Habib Al-Wahabul Khairi, Advocate Supreme Court and another v. FEDERATION OF PAKISTAN and others" (PLD 1997 Supreme Court 84), "KHAN ASFANDYAR WALI and others v. FEDERATION OF PAKISTAN through Cabinet Division, Islamabad and others" (PLD 2001 Supreme Court 607), "ARSHAD MEHMOOD and others v. GOVERNMENT OF PUNJAB through Secretary, Transport Civil Secretariat, Lahore and others" (PLD 2005 Supreme Court 193), (PLD 2011 SC 619) SUO MOTU CASE NO.13 of 2009 (Nexus between Articles 9 and 38); "FIAQAT HUSSAIN and others v. FEDERATION OF PAKISTAN through Secretary, Planning and Development Division, Islamabad and others" (PLD 2012 SC 224), 2013 SCMR 1752 (right to reputation), "LAHORE DEVELOPMENT AUTHORITY through D.-G. and others v. Ms. IMRANA TIWANA and others" (2015 SCMR 1739), "SHAHAB USTO Versus GOVERNMENT OF SINDH through Chief Secretary and others" (2017 SCMR 732) (right to clean water and sewerage disposal), "NADIR ALI v. MEDICAL SUPERINTENDNET, CIVIL HOSPITAL, LARKANA and 9 others" (PLD 2017 Sindh 448) and "Messrs GETZ PHARMA (PVT) LTD. through Authorised Person v. FEDERATION OF PAKISTAN, through Secretary, Ministry of National Regulation and Services and another" (PLD 2017 Sindh 157) (right to health).

27. The Interpretation of Fundamental Rights has to be dynamic and progressive and not pedantic. Reference is made on "MUNIR HUSSAIN BHATTI, ADVOCATE and others v. FEDERATION OF PAKISTAN and another" (PLD 2011 Supreme Court 407), "WATAN PARTY and others v. FEDERATION OF PAKISTAN and others" (PLD 2012 Supreme Court 292), "GOVERNMENT OF BALOCHISTAN through Additional Chief Secretary v. AZIZULLAH MEMON and 16 others" (PLD 1993 Supreme Court 341) and "Rana AAMER RAZA ASHFAQ and another v. Dr. MINHAJ AHMAD KHAN and another" (2012 SCMR 6). Article 25 read with Articles 2A, 4, 9, 35 and 38(d) means that the Respondents are bound to formulate policy / law for the protection of the Fundamental Rights of the Citizens, namely the survival, economic and social uplift of the people of Pakistan.

In Dubio Pro Natura

IUCN World Declaration on the Environmental Rule of Law:

This Principle is reflected in Principle 5 of the IUCN World Declaration which states: ―In Case of Doubt, all matters before courts, administrative agencies, and other decision makers shall be resolved in a way most likely to favour the protection and

conservation of the environment, with preference to be given to alternatives that are least harmful to the environment. Actions shall not be undertaken when their potential adverse impact on the environment are disproportionate or excessive in relation to the benefits derived there from."

This Principle has been recognized in the following cases;

i. Maple Leaf Cement Factory Limited v. EPA; PLD 2018 Lahore 255 (Para 19; Page-268)

ii. Shweta Wagh v. Municipal Corporation (Bombay High Court), 2019 (Para 15; Pages 4 and 5)

iii. Hanuman Laxman Aroshkar v. Union of India (SC India), 2019 (Para 130; Pages 48 and 49)

28. The international principle, "Indubio pro natura", meaning, when in doubt matters shall be resolved in favour of protection of the environment. This Principle has recently been incorporated into our law in the judgment cited as "MAPLE LEAF CEMENT FACTORY LTD v. ENVIRONMENTAL PROTECTION AGENCY and others" (PLD 2018 Lahore 255) wherein Principle 3 of the IUCN Declaration has been referred to:

"In cases of doubt, matters shall be resolved in a way which is most likely to favour the protection and conservation of the environment. Actions shall not be undertaken when their potential adverse effects on the environment are disproportionate or excessive in relation to the benefits derived therein".

The said principle has also been relied upon in a case from Bombay High Court -- Society for Improvement Vs. Municipal Corporation.

Precautionary Principle

This Principle is reflected in Principle 10 of Rio Declaration, 1992 and provides that "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.

This Principle has been recognized in the following cases;

I. M.C. Mehta v. Union of India; AIR 1997 SC 734 (At Para 26; Page 760)

II. Shehla Zia v. WAPDA; PLD 1994 SC 693 (Para 8; Pages 708, 709).

III. Adeel-ur-Rehman v. FOP; 2005 PTD 172 (Para 17; Pages 181, 182).

IV. Imrana Tiwana v. POP; 2015 CLD 983 (Paras 24, 25; Pages 1026, 1027) .

V. Ali Steel Industry v. Government of Khyber Pakhtunkhwa; 2016 CLD 569 (Para 13; Page 576).

VI. Muhammad Ayaz v. GOP; 2017 CLD 772 (Paras 10, 11, 12; Pages 780-782).

VII. Maple Leaf Cement Factory Limited v. EPA; PLD 2018 Lahore 255 (Para 19; Page-268).

29. The Precautionary Principle finds mention in the Stockholm Declaration 1972 and is enunciated in Principle 15 of the Rio Declaration 1992:

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation."

This international environmental law, namely, Precautionary Principle has been incorporated into our law through the Shehla Zia judgment and is now a settled part of our domestic jurisprudence.

(Reliance: "MS. SHEHLA ZIA AND OTHERS v. WAPDA" (PLD 1994 SC 693),"Haji MUHAMMAD ISMAIL PROPRIETOR OF MUHAMMAD ISMAIL CONSTRUCTION COMPANY v. DIRECTOR GENERAL EPA and others" (2019 CLD 80), "MAPLE LEAF CEMENT FACTORY LTD v. ENVIRONMENTAL PROTECTION AGENCY and others" (PLD 2018 Lahore 255), "PUNJAB HEALTHCARE COMMISSION v. MUSHTAQ AHMED CHAUDHARY and others" (PLD 2018 Lahore 762), "WALID IQBAL v. FEDERATION OF PAKISTAN and others" (PLD 2018 Lahore 1), "MUHAMMAD AYAZ v. GOVERNMENT OF PUNJAB through Chief Secretary and others" (2017 CLD 772), "LUNG FUNG CHINESE RESTAURANT through Atiq Ahmed and 2 others v. PUNJAB FOOD AUTHORITY through Secretary and 6 others" (PLD 2017 Lahore 545), "ALI STEEL INDUSTRY through Proprietor v. GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and another" (2016 CLD 569) and "Ms. IMRANA TIWANA and others v. PROVINCE OF PUNJAB and others" (PLD 2015 Lahore 522). The Sustainable Development Principle also finds mention in the Rio Declaration and has entered domestic statute in both the Federal Statute and the Punjab Protection of Environment Act 1997 (PEPA), wherein the concept of "sustainable development" is defined at section 2(xlii) of PEPA as development that meets the needs of the present generation without compromising the ability of the future generations to meet their needs" (Reliance: "PEPSI COLA INTERNATIONAL (PRIVATE) LIMITED through Authorized Officer v. The PUNJAB ENVIRONMENTAL PROTECTION AGENCY through Director General and others" (2018 CLD 1429), "ASGHAR LEGHARI v. FEDERATION OF PAKISTAN and others" (PLD 2018 Lahore 364), "MUHAMMAD AYAZ v. GOVERNMENT OF PUNJAB through Chief Secretary and others" (2017 CLD 772), "MAPLE LEAF CEMENT FACTORY LTD v. ENVIRONMENTAL PROTECTION AGENCY and others" (PLD 2018

Lahore 255), "ALI STEEL INDUSTRY through Proprietor v. GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and another" (2016 CLD 569), "KAMIL KHAN MUMTAZ and others v. PROVINCE OF PUNJAB through Chief Secretary, Government of Punjab, Lahore and others" (PLD 2016 Lahore 699), "ABDUL SATTAR and another v. The STATE" (2016 PCr.LJ 396), "Messrs UNITED ETHANOL LIMITED and 6 others v. ENVIRONMENTAL PROTECTION AGENCY, PUNJAB" (2015 CLD 1079), "Ms. IMRANA TIWANA and others v. PROVINCE OF PUNJAB and others" (PLD 2015 Lahore 522), "YOUNG DOCTORS ASSOCIATION and others v. GOVERNMENT OF PAKISTAN and others" (PLD 2015 Lahore 112), "MUMTAZ KHAN and others v. GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Forest Department and others" (2014 CLC 985), 2011 SCMR 1743 (Cutting of trees for canal widening project, Lahore), "GHULAM MUSTAFA and 189 others v. PROVINCE OF SINDH through Secretary, Education Department and 6 others" (2010 CLC 1383), "SHEHRI C.B.E. v. GOVERNMENT OF PAKISTAN and others" (2007 CLD 783), Supreme Court of India - Hanuman Laxman Aroskar v. Union of India; Supreme Court of India -Arjun Gopal v. Union of India; Thybaut v. Region Wallonne Case C-160/17--European Union Cases; [2019] Env. L.R. 8--Thybaut v R gion Wallonne).

30. The international environmental law concept of Environmental Justice has been incorporated into our law via the Asghar Leghari case (Reliance: PLD 2018 Lahore 364, Maple Leaf Cement case (PLD 2018 Lahore 255) and Muhammad Ayaz case (2017 CLD 772).

31. The Public Trust Doctrine has been part of the international environmental law since the Stockholm Declaration, 1972 and has entered our law through the Cutting of Trees for Canal Widening Project Lahore case reported at 2011 SCMR 1743; PLD 2018 Lahore 364 - Asghar Leghari Case PLD 2017 Lahore 545; Lung Fung Chinese Restaurant v. Punjab Food Authority; 2015 SCMR 1520 Lahore Bachao Tehrik v. Dr. Iqbal Muhammad Chauhan; PLD 2015 Lahore 522; Imrana Tiwana v. Province of Punjab; PLD 2015 Lahore 112 -- Young Doctors Association v. Government of Pakistan; 2011 SCMR 1743 - Cutting of Trees for Canal Widening Project Lahore; 2007 CLC 1358 Lahore - Muhammad Tariq Abbasi v. Defence Housing Authority).

B. The Forest Act, 1927

32. The Provincial Forest Act, 1927 consolidates the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce etc in Punjab. Section 2(c) defines the "forest" as "a reserved forest, protected forest, unclassed forest and village forest and includes wasteland or rangeland". It may be noted that in the above definition, following four (4) types of forests have been described:

(a) Sections 3 and 4 empower the Punjab Government to constitute any government forest-land or waste-land a "reserved forest" by issuing notification in the official Gazette.

(b) Under Section 29, the Provincial Government may, by notification in the official Gazette, extend the applicability of provisions to any government forest-land or waste-land which is not included in a reserved forest, which is called a "protected forest". Section 32 empowers the Provincial Government to make rules for protected forests.

(c) The Provincial Government may also declare a wasteland, not being a reserved forest or protected forest, as "unclassed forest"; and may also direct that all or any provisions of the Forest Act relating to a reserved forest or protected forest, shall apply to an unclassed forest; and may make rules for management of an unclassed forest (Section 28-A).

(d) Section 28 empowers the Provincial Government to assign to any village-community the rights of Government over reserved forest, which are then called "village forests". It further empowers the Provincial Government to make rules for management of a village-forest; and to prescribe conditions under which the village community may use the forest produce other than timber and pasture and duties of the village community for the protection and improvement of the forest (Section 28). It may be noted that the provisions relating to the reserved forests are also applicable to the village forests.

33. Interestingly, the Punjab Government cannot: (a) declare or notify a reserved forest or any part of the reserved forest as being "no longer reserved forest" without the approval of the Provincial Cabinet, (b) allow change in land use of a reserved forest, except for the purposes of right of way, building of roads and development of a forest park, and (c) allow construction of concrete building or permanent structure in the reserved forest (Section 27).

34. On the other hand, the Forest Act also authorizes the Provincial Government to (a) declare any trees or class of trees in a protected forest to be reserved; (b) declare, subject to conditions, that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, and (c) prohibit the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest (Section 30).

35. The Provincial Government also has power to declare forest no longer protected subject to certain restrictions (Section 34-A); to protect forests for special purposes (Section 35); to assume management of forests in case of neglect of, or wilful disobedience to, any regulation or prohibition under Section 35, or if the purposes

of any work to be constructed (Section 36); for expropriation of forests in certain cases (Section 37); for protection of forests at request of owners (Section 38); to impose duty on timber and other forest-produce (Section 39); to make rules to regulate transit of forest-produce (Section 41); and to movements of timber across Customs frontiers (Section 41-A).

36. Section 78-A empowers the Provincial Government to establish a forest company to oversee the implementation of public private partnership on the assigned forest land or wasteland to a forest company. Further, the Board of Directors of a forest company may be constituted with equal representation from public and private sectors to manage its functioning. The forest company is required to invite applications of eligible persons through a public notice, published in at least two national daily newspapers, for public private partnership for the development of forest on the forest land or wasteland (Section 78-B). Similarly, the Provincial Government is also authorized, itself or through a forest company, to invite proposals for the development of a forest land or wasteland, and to enter into public private partnership for the development, preservation and conservation of a forest land or wasteland, for increase in the productivity of the forest (Section 80-A).

C. The Punjab Plantation and Maintenance of Trees Act, 1974 (the "Trees Act")

37. The Trees Act has been enacted in the public interest to provide for plantation of more trees and maintenance of the same in Punjab. Section 2(c) of the Trees Act, defines "land" as the "land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes the sites of buildings and other structures on such land". Section 2(d) defines the "occupier" as "a person in actual physical possession of the land and shall also include an owner".

38. Section 3 requires the occupier to plant three (3) trees per acre by the occupier in the prescribed manner, and maintain the same. Section 4 imposes the penalty, in case of contravention of Section 3, of rupee one per tree, after giving an opportunity of hearing to the person concerned. Section 5 empowers the Punjab Government to make rules to carry out the purposes of the Trees Act, to provide for, among others, (a) the manner in which trees may be planted and maintained; (b) kind of trees to be planted in different areas and the period within which the trees are to be planted; and (c) the procedure for maintaining the record of trees.

D. The Parks and Horticulture Authority Act 2012 (the "PHA Act")

39. The PHA Act establishes the Parks and Horticulture Authority ("PHA") to (a) develop and maintain public parks, green belts and green areas; (b) regulate the use of public parks, green belts and green areas; (c) regulate the installation of billboards, sky signs, out-

door advertisements on private or public property; (d) establish and maintain botanical gardens; (e) organize shows and exhibitions pertaining to horticulture, aviculture and cultural entertainment; (f) protect trees and other vegetation; (g) create awareness about horticulture and promote gardening; (h) acquire land for the development of any public park, green belt, or green area; (i) procure machinery, equipment or material as may be required for the proper discharge of its functions; (j) grant a service contract for the maintenance of public parks, green belts or green areas to a company owned by it or to any other private or public limited company; (k) constitute committees for performing specific functions of PHA; and (l) perform such other functions as may be ancillary, or as may be prescribed (Section 4).

40. PHA is required to determine the extent of a planned area to be reserved and maintained as a public park, green belt or green area, and a public land authority or a private land authority is required to obtain prior sanction of PHA for any development plan (Section 14). PHA is required to undertake beautification and maintenance of areas required to be kept green by a public land authority, or may require the private land authority to maintain and beautify the same (Section 15). Similarly, PHA may require the resident or owner of a property to maintain a green belt between his property and the public road, and may remove a construction from a green belt or bring the level of a green belt to the prescribed level at its own cost (Section 16).

E. Punjab Environmental Protection Act, 1997 ("PEPA")

41. PEPA provides for the protection, conservation, rehabilitation and improvement of the environment. Section 12 states that no proponent of a project shall commence construction which is likely to cause an adverse environmental effect which is defined under Section 2(i).

F. Lahore Development Authority Act, 1975 (the "LDA Act")

42. Section 20 confers power on LDA to undertake improvement of environment in Lahore Division and to check, eliminate, replace or relocate sources of environmental pollution. Further, Section 21 empowers LDA to undertake beautification of Lahore Division, prescribed environmental standards to be adopted by government agencies or to direct any government agency to make improvements in beautification of Lahore Division. According to Second Schedule, causing harm to the environment is an offence punishable under Section 35.

G. Punjab Development of Cities Act, 1976

43. Section 4 of this Act has created the Multan Development Authority and Faisalabad Development Authority. Section 19 confers power on MDA and FDA to undertake improvement of environment in the Area and to check, eliminate, replace or relocate sources of

environmental pollution. Section 20 empowers MDA and FDA to undertake beautification of the Area, prescribed environmental standards to be adopted by government agencies or to direct any government agency to make improvements in beautification of the Area. According to the Schedule; Part-A, causing harm to the environment is an offence punishable under Section 34.

H. Punjab Local Government Act, 2019

44. Section 150 (1) (j) states that all trees, plants and flowers on roadsides and other places maintained by the local government constituted under Section 15 shall vest in a local government. Further, following two entries are present in Part II of the Third Schedule of this Act stating functions of a Metropolitan Corporation, Municipal Corporation and Municipal Committee: .... (dd) Environmental Health, awareness and services .... (ee) Parks and landscape development. Similarly, following two entries are present in Part II of the Fourth Schedule of this Act stating functions of a Town Committee: .... (z) Environmental health, awareness, services, ... (aa) Parks and landscape development. Moreover, following two entries are present in Part II of the Fifth Schedule of the Act stating functions of a Tehsil Council: .... (dd) Environmental Health, awareness, services .... (ee) Parks and landscape development.

I. Punjab Village Forest Rules, 2013

45. Under Rules 3 and 4, a Village Forest Committee is formed which shall suitably demarcate the boundaries of Village Forest. Under Rule 4(b), no person shall collect, cut or remove wood or other forest produce from the Village Forest. Rule 4 (2) prohibits to collect, cut or remove wood or other forest produce from the Village Forest. Rule 5 prohibits a person to cut, injure, and remove any tree grown in a Village Forest.

J. The National Climate Change Policy, 2012

46. The National Climate Change Policy provides a framework for addressing the issues that Pakistan faces or will face in future due to the changing climate. The policy provides a comprehensive framework for the development of Action Plans for national efforts on adaptation and mitigation. Clause 3 provides the important climate change threats to Pakistan, which include "further decrease in the already scanty forest cover, from too rapid change in climatic conditions to allow natural migration of adversely affected plant species". This Policy has also constituted the National Climate Change Policy Implementation Committee, with the Minister of Climate Change at the Federal Level as its Chairperson; and the Provincial Climate Change Policy Implementation Committee, with the Provincial Minister for Environment as its Chairperson.

47. Before going any further, it is essential to describe the climate change effect on the Forestry, as described in the National Climate Change Policy:

4.4. Forestry

Climate change is likely to have multi-faceted adverse effects on the ecosystem as a whole, particularly on the already vulnerable forestry sector in Pakistan. The most likely impacts of climate change will be decreased productivity, changes in species composition, reduced forest area, unfavorable conditions for biodiversity, higher flood risks and the like, as portrayed in the Planning Commission Task Force on Climate Change (TFCC) Report. Adaptation in the forestry sector entails the need to restore and enhance Pakistan's forests under sustainable forest management, with particular focus on how these are affected by climate change. This will not only benefit state forests but forest dependent communities and society as a whole.

This policy suggests the Policy Measures relating to the Forestry, which includes (a) the Awareness Raising, (b) Research on adaptation of forests, biodiversity and forest management systems to climate change, (c) Reforms in Governance, (d) Enhancing Adaptive Capacity, (e) Forest Management with afforestation and reforestation programs with plantation suited to the effects of climate change, (f) Arresting Soil Erosion, and (g) Reducing Forest Fires, Disease Outbreaks and Other Damage.

48. Similarly, this Policy requires the Government to take the following policy measures to conserve, restore and protect the biological diversity of Pakistan: (a) encourage empirical research on flora and fauna in the context of their responses to current and historical climatic changes; (b) set National Biodiversity Indicators and provide the requisite financial resources for implementation of the Biodiversity Action Plan (BAP); (c) establish gene banks, seed banks, zoos and botanical gardens to conserve the biological diversity of valuable species; (d) Integrate conservation and protection of biological diversity into various disciplines such as forestry and marine and pastures; (e) encourage involvement of local communities in conservation and sustainable use of biodiversity; (f) take necessary measures to establish nature reserves in areas that are rich in biodiversity to preserve their existence; (g) establish protected areas in all vulnerable ecosystems, particularly in coastal and marine areas; (h) ensure that "ecosystem based adaptation" is part of an overall climate change adaptation strategy at all levels (national to local); and (i) assist genetically impoverished species or those that have important ecosystem functions by providing natural migration corridors as well as assisted migration.

49. Similarly, in Clause 4.6.5, this Policy prescribes the importance of wetlands and requires the Government to ensure control of siltation of wetlands by reducing deforestation and felling of timber in catchment areas. Further, in Clause 5.7, this Policy requires the Government of Pakistan, in collaboration with national entities and support from multilateral agencies, to take the following policy measures in the forestry sector to sequester atmospheric carbon, thereby mitigating climate change: (a) set annual afforestation and reforestation targets to increase the country's forest cover; (b) strictly

prohibit illegal forest cutting and conversion of forest land to non-forest uses; (c) enact and enforce laws and regulations required for addressing illegal trade in timber and de-forestation; (d) use the vast mass of cultivable wasteland as a carbon sink and to build up organic soil matter; (e) provide incentives and alternative fuel and livelihood options to forest dependent communities to prevent deforestation; (f) promote farm forestry practices by planting multipurpose fast-growing species to meet the needs for timber, fuel wood and fodder for livestock; (g) encourage and support forestry personnel in carbon forestry project development; (h) establish linkages with regulated and voluntary carbon markets to promote and encourage forestry mitigation projects in Pakistan; (i) secure financial assistance from the World Bank's Forest Carbon Partnership Facility (FCPF) and UN-REDD (Reducing Emissions from Deforestation and Forest Degradation) program as well as from other international sources to formulate a national program for avoiding deforestation and promoting forest restoration; (j) prepare the framework for a national REDD strategy on priority basis and ensure its implementation in accordance with international conventions/ processes; (k) develop the legal and institutional framework for improved forest management, investment clearly specifying rights to REDD+ credits; and (l) restore and establish the blue carbon sequestration capacity of mangroves, sea-grasses and tidal marshes.

50. In relation to the Awareness Raising in Clause 7(c), the Government of Pakistan, in collaboration with the relevant entities, is required to ensure advocacy and mass awareness regarding the importance of water and energy conservation, the impact of climate change on various sectors including forest ecosystems, biodiversity and so on, using mass media, public- private partnerships, students and community mobilization; and incorporate these issues into the formal education systems at all levels.

K. The National Forest Policy, 2015

51. Keeping in view certain facts, this Policy has following three (3) pronged approaches: (a) conserving the existing forests by curbing deforestation and promoting conservation, (b) bringing more trees in and outside forests by mass afforestation, involving all sections of the society, particularly on communal lands, shamlats and guzara forests, and (c) meet International Obligations and Opportunities through scientific planning, legal reforms and capacity building.

52. These approaches are required to be met through the strategic actions, including (a) Expand Forest Cover; (b) Mass afforestation Programme; (c) Integrating Forests with Economic Sectors; (d) Ecological Corridors; (e) Curb Deforestation and Promote Conservation; (f) Regulating Inter-Provincial Timber Movement, Commerce and Trade; (g) Reducing Emissions from Deforestation and Forest Degradation under the UNFCCC Agreements on Reducing Emissions from Deforestation and Forest Degradation (REDD+); (h) Forest Ownership and Rights; (i) Promote Integrated

Approach of Forests, Wildlife and Biodiversity Management; (j) International Obligations and Opportunities under the three Rio Conventions viz: the United Nations Framework Convention on Climate Change UNFCCC, United Nations Convention to Combat Desertification UNCCD, and the Convention on Biological Diversity CBD; (k) Scientific Planning, Policy and Legal Reforms; (l) National Institution for Research, Education, Training and Monitoring; and (m) Economic Coordination and Sustainable Financial Support.

This Policy requires the following logical steps for its effective implementation:

(a) Ministry of Climate Change shall develop, in consultation with all stakeholders, an action plan for implementation of the National Forest Policy. The action plan will assign specific responsibilities to stakeholders with quantifiable targets to be achieved within a given timeframe.

(b) The Federal Forestry Board shall be reactivated under the chairmanship of the Minister for Climate Change with a renewed mandate, composition, and functions.

(c) The Federal Forestry Board shall report to the Government on the progress of National Forest Policy NFP on a six-monthly basis.

(d) Provinces shall constitute inter-departmental NFP implementation committees and report their decisions to the Federal Forestry Board.

(e) The Federal Government shall undertake preparation of necessary legislation for implementing Federal components of this Policy, including for creation of new national institution and authority.

(f) The Policy shall be reviewed after 5 years of its implementation and strategic decisions shall be taken accordingly.

L. The Forest Policy Statement, 1999 and the Punjab Forestry Sector (Forests, Watershed, Rangelands and Wildlife) Policy, 1999

53. This Statement requires that: (i) the tree and vegetation cover shall be increased on farmlands, marginal and sub-marginal lands to make up the deficiency of forest resources in the province; (ii) a proper land use planning Programme based on land capability classification, shall be formulated; (iii) these rights shall be rationalized on the basis of carrying capacity of the public forests for sustained and perpetual benefit to the right holders; (iv) land and irrigation water shall be utilized to their maximum productive potential through on-farm water management, appropriate agroforestry practices and Joint Forest Management (JFM) of the land resource in the public sector irrigated plantations; (v) the resource use shall be regulated according to their capability and carrying capacity; (vi) the participation of stakeholders in resource

management shall be encouraged and ensured; (vii) such areas shall be rehabilitated, besides adopting other measures, through biological drainage programme involving plantation of suitable tree species at the farms, also to check the trend and maintain their productive potential; (viii) appropriate measures shall be adopted to combat and arrest the desertification process and maintain the areas for their productive use such as range management, dry afforestation, rainfed agriculture wherever possible etc; (ix) communal and private forests shall be covered by a tenable scientific management and appropriate legal cover, for meeting the needs of the rural communities on sustained basis; (x) the management of watersheds shall be streamlined to ensure their sustainable development and conservation, according to their capability for perpetual use. Land capability classification shall, also, be carried out to assess their capability for various uses and to evaluate the carrying capacity for sustained benefits. The legislative cover shall also be provided to encourage participation of the stakeholders; (xi) maximum private investment shall be encouraged in forestry production, especially in wood based industries like Pulp and Paper, Sports, Furniture, Livestock etc. through Joint Forest Management (JFM), joint ventures and long term leases under supervision of Punjab Forestry, Wildlife, Fisheries and Tourism Department; (xii) suitable incentives (inputs or market oriented) shall be provided to encourage large scale afforestation on farms through appropriate Agroforestry (AF) systems; (xiii) mass awareness and public education in respect of forests, environment, wildlife, biodiversity, watershed values, other intangible benefits and need for effective protection of these resources, through electronic media and farm level research shall be undertaken; (xiv) suitable habitat shall be developed and maintained for conservation and propagation of wild flora and fauna of the province also to entertain the migratory species visiting the Punjab province; (xv) wildlife farming and ranching shall be encouraged in the private sector; (xvi) legislative reforms shall be carried out to improve enforcement of laws through improved legislative provisions; (xvii) in-situ and ex-situ measures shall be adopted to maintain biological diversity, through establishment of breeding centres, game reserves, game sanctuaries, zoological gardens etc. to conserve the species and gene pool; (xviii) appropriate measures shall be taken to develop and exploit this potential for expanding recreational facilities for the public; (xix) a system shall be evolved to value such non-consumptive use and intangible benefits of the forestry sector resources; (xx) solid steps shall be taken to maintain pollution free livable environment and stand firmly by the international commitments for the betterment of humanity, masses in Pakistan and province of Punjab; (xxi) suitable measures shall be taken to conserve natural ecosystems in various agro-ecological zones of the province through establishment of Protected Areas scientific management plans; (xxii) it shall be made mandatory to undertake screening and EIA of all the projects to safeguard against environmental degradation and ensure sustainable development; (xxiii) the communities shall be actively involved in decision making, considering their bona fide needs on

top priority basis in planning, development and management of resources; (xxiv) the marketing system and efficiency of utilization by the wood based industries and other end users shall be improved. A continuous marketing and utilization surveillance and elaborate information system required for a free capitalistic marketing system for the farmers and department to realize true price for their products and services, shall be introduced, in addition to exploring the possibility of producing and exporting value added goods. The marketing system and utilization efficiency shall be organized on modern scientific lines; (xxv) there is dire need for introducing efficient exploitation and utilization of the scarce forestry products and services. Appropriate research and mechanization shall be introduced in this important discipline of forestry sector; (xxvi) the departmental planning and development process shall be recognized, linked with the planning process of the P&D Department and Planning Commission of Pakistan to make applicable to Forestry, Wildlife, Fisheries and Tourism Department; (xxvii) the existing monitoring and evaluation facilities shall be updated on modern lines and decentralized to make it effective and purposeful at different levels; (xxviii) the forward planning process shall be introduced in forestry sector, on the modern lines; (xxix) the Punjab Forestry Research Institute, Faisalabad and Punjab Wildlife Research Institute, Faisalabad shall be amalgamated, reorganized and upgraded to deliver the goods and help in addressing the emerging challenges in forestry sector development; (xxx) a modern, well-equipped database centre shall be established at the Punjab Forestry and Wildlife Research Institute Faisalabad to cater for the requirement within and outside the department; (xxxi) the capacity and financial inputs in research in Forestry, Wildlife and Range Management shall be enhanced and strengthened in accordance with the increasing needs; (xxxii) inconsistencies shall be removed and the conflicts shall be resolved for smooth implementation of forestry sector policy; (xxxiii) it is necessary to revise, update and consolidate all enactments to cater for natural resource management in accordance with the modern concepts of participation of stakeholders, Joint Forest, Wildlife and Range Management, Joint Ventures with wood based industries and Ecosystem Management. The legislation shall be revised and all enactment shall be consolidated and updated to address the current challenges; (xxxiv) the forest policy shall be reviewed periodically and revised every five years to accommodate the changing demands on resource use; (xxxv) the Punjab Forestry and Wildlife Research Institute, Faisalabad shall be upgraded and strengthened to cater for the continuous requirement of the capacity building and human resource development; (xxxvi) an extensive mass awareness programme shall be launched for education and extension at various levels, including policy makers to enhance awareness and political commitment for development and conservation of natural resources in the province; (xxxvii) Government of the Punjab shall stand by all these commitments and shall seek international collaboration in funding the management and conservation of natural resources in the global perspective; (xxxviii) a workable forest protection strategy

shall be formulated with the participation of stakeholders by formulating the Community Organizations (CO) for the public, communal and private forests. Various forest enactments and rules shall be revised and consolidated; (xxxix) ecosystem reserves shall be developed in various agro-ecological zones of the province to preserve the original flora and fauna and maintain Biodiversity; and (xxxx) there shall be complete ban on change of land use of the forestlands. In case it is inevitable to transfer any forest area, at least an equal area shall be transferred to forestry sector in lieu of the land so transferred.

M. Policy on Controlling Smog, 2017

54. Paragraph 7 of the Policy EPA has to closely work with Board of Revenue to identify an air mark state land in the vicinity of large cities/town for tree plantation. Furthermore, EPA has to work with forest department to identify suitable tree species and maintain wood lands on indicated pieces of land. Under Paragraph 10, Environmental Protection Department is obligated to conceive and implement projects for greening of industrial existing units. Paragraph 11 of the Policy states that the Provincial Environmental Committee (PEC) shall oversee the implementation of this policy while coordination shall be the responsibility of Environmental Protection Department.

N. Punjab Environment Policy, 2015

55. Paragraph 3 of the Policy sets out the goal of the Policy to protect, conserve and restore Punjab Environment to improve quality of life of citizens. Paragraph 4 of the Policy sets out its objectives which, inter alia, includes protection, conservation and improvement of environment, prevention and control of pollution, development and management of environmental resources. Paragraph No. 7.2 recognizes that the desertification is a type of land degradation whereby lands are becoming arid losing water, vegetation and wild life. The Policy states that action is required to formulate and implement a policy for restoring the desertification at provincial and district level. Paragraph 7.9 of this Policy prescribes following actions, amongst others, to ensure sustainable management of natural forest of Punjab and increase tree cover for safeguarding the economic growth, environment, bio-diversity and food security in Punjab province: (a) Formulate and implement the Punjab Forest Policy to enhance forest cover up to 25% of the area of the Province to take corrective action to stop deforestation parade; (b) Formulate regulatory to prevent forest cutting; and (c) Carry out intensive institutional and legal reforms to promote good forest governance.

56. Paragraph 7.10 of the Policy sets out certain actions for conservation and sustainable views of bio-diversity and protected areas: (a) To create new national parks and protected areas; (b) Develop a comprehensive Provincial Wet Land Policy; (c) Develop Policy for conservation and cultivation of medicinal/economic

plants; (d) Towns of low park/green belt should be converted into any other activity area; (e) Parks and green belt and urban areas should be improved to enhance bio-diversity.

57. Paragraph 7.12 requires that in order to address challenges posed by climate changes and to protect the ozone layer, the Government should identify areas affected by climate change and its impact on water resources, forests and agricultures. Paragraph 8.5 states that promotion of environmental education is vital to sensitize the public at large for prevention of pollution and preservation of the environment. It proposes the following actions: (a) Incorporate subjection of Environment Size in all classes from primary to higher education; (b) Induction of "Environment Teacher" at school and college levels; (c) All public sector universities should launch Ph. D. and M. Phill programs in subject of environment; (d) Introduction of short course/diplomas in public and private universities in subject of environment; (e) Educational Institutions should provide barriers on road sides through tree plantations; (f) Establishment of "Environment Clubs" in all educational institutes.

58. Paragraph 11 states that "Provincial Environment Policy Implementation Committee" would be established at the provincial level for effective coordination of this policy. Provincial District and Tehsil Governments would also constitute "Policy Implementation Committee" to ensure implementation of the Policy

O. The Punjab Forest Policy, (Draft) 2018

59. Secretary Forestry, Wildlife and Fisheries Department state that pursuant to orders of this Court dated 31.01.2019, they convened a meeting and prepared draft of Punjab Forest Policy, 2018 (the "Draft Policy").

60. Deputy Director, Ministry of Climate Change states that Draft Policy has been approved by the FW and FD will be approved by the Cabinet in its next meeting.

61. Additional Secretary, Forestry, Wildlife and Fisheries Department stated that they have prepared draft Policy pursuant to orders of this Court after conducting various meetings with all relevant stakeholders and prepared a summary for Chief Minister on 06.05.2019 to allow the draft policy to be placed before Standing Committee of Cabinet on Legislative Business for its approval. He further states that due to massive tree plantation campaign and efforts of Urban Unit, Forest Department has received the demand for tree plantation from various divisions across Punjab in which 5.3 million plants were sold. He points out that on the eve of Forest Day, they have planted more than 7,75,836 trees throughout Punjab

62. Mr. Shahid Rashid Awan, Additional Secretary, Forestry, Wildlife and Fisheries Department appeared and stated that the Draft Policy has been finalized pursuant to orders of this Court after conducting various meetings and consultative sessions on 14.02.2019,

06.03.2019, 15.03.2019 and 25.03.2019 and receiving comments from all stakeholders, government departments, authorities, civil societies as well as the counsel for the Petitioners. He stated that Forest Department has prepared a summary for Chief Minister on 25.04.2019 to allow the draft policy to be placed before Standing Committee of Cabinet on Legislative Business for its approval.

63. Capt.(R) Muhammad Asif, Secretary and Mr. Shahid Rashid Awan, Additional Secretary of Forestry, Wildlife and Fisheries Department stated that pursuant to this Court's order, they have prepared Draft Policy with consultation of Parks and Horticulture Department (PHA), Local Government and Community Development Department, Cooperative Department as well as Urban Unit of P & D Department but Environmental Protection Department could not join the meeting. The Secretary Environmental Protection Department was directed to join the matter for finalization of the Draft Policy.

P. The Punjab Urban and Peri-Urban Forest Policy, (Draft) 2019

64. In Pursuance of order of this Court dated 11.02.2019, Khalid Sherdil, CEO, Urban Unit, P & D and Shahid Rashid Awan, Additional Secretary (Technical) FW&F Department, appeared and stated that on 14.02.2019 they convene a meeting on the draft of "the Punjab Urban and Peri-Urban Forest Policy, (Draft) 2019" (the "Draft Policy") which was attended by various Government Departments. They said that they are also in contact with the other stakeholders and relevant Departments before finalizing the said Draft Policy. In this regard they produced before the Court a booklet containing detailed revised Draft Policy and stated that they will circulate the same amongst the concerned Departments before finalizing the Draft Policy consisting of land/soil for the plantation of the trees, species of the trees, time of the plantation, stock of the trees, responsible executing Departments/Agencies/ Persons.

65. Mr. Khalid Sherdil, CEO, Urban Unit, P&D was directed to convene a meeting on 14.02.2019 and all the concerned departments as well as the Petitioner and other applicants were directed to join the meeting for finalization of draft policy.

66. Pursuant to orders dated 31.01.2019, 11.02.2019 and 19.02.2019, Khalid Sherdil, CEO, Urban Unit, P&D appeared and stated that after revising the Draft Policy, they have prepared a comprehensive document after meetings with stakeholders on 20.02.2019 and 25.02.2019. He further stated that they have taken comments from all stakeholders and circulated comprehensive policy to thirty-six (36) departments in order to obtain their comments and inputs for the Draft Policy and in this respect they have also scheduled a meeting of Stakeholders Consultative Sessions on 05.03.2019 to have discussion and receive input from the government and other stakeholders. He further informed the Court that they are also seeking information from all the stakeholders regarding the area designated for forests, location of

area, number of trees to be planted, types of trees, responsible officers and date of plantation.

67. Khalid Sherdil, CEO, Urban Unit, P&D appeared and filed progress report dated 06.05.2019 on Punjab Urban & Peri-Urban Forest Policy. He states that pursuant to orders of this Court, the Urban Unit along with Forest Department and other departments of government of Punjab has prepared revised draft and presented the same to various stakeholders.

Khalid Sherdil further states that as per directions of this Court, the Urban Unit started Urban Tree Plantation Campaign, 2019 with industries, housing societies and has identified 270 societies in Lahore which are mentioned in Annex-I of the report along with list of industries (Annex-H of the report). He next states that under GIS Mapping, most of the areas are not made part or cover the trees however, the Urban Unit is constantly in touch with Director General, LDA, Director General, PHA and Registrar of the Societies to take action therefore Director General, LDA, Director General, PHA and Registrar of the Societies were directed to appear in person, in order to conclude this case by giving certain directions under writ of mandamus under the respective laws. He points out that in order to implement the policy, Urban Unit needs certain budget from the Planning and Development Department for which they have written letter to the Secretary, therefore, Secretary P&D was directed to appear in person in order to conclude the case. He further points out that Urban Unit has identified 650 industries but they have not planted trees which is in violation of their own undertaking given to Environmental Protection Department when NOC was issued to them under Initial Environmental Examination and Environmental Impact Assessment Regulations, 2000 read with Section 12 of the Punjab Environmental Protection Act, 1997 therefore, the Secretary Environmental Protection Deptt was also directed to appear in person along with permission/NOC granted to industries under the Regulations.

Q. Punjab Clean Air Action Plan (Draft)

68. Paragraph No. 4 of the Draft Policy shows that there is a 72% loss of tree cover in the Province in just 8 years from 2007 to 2015. The Draft Policy mandates transplanting of trees rather cutting of trees for development projects. It further states that projects will be implemented for three fold increase in trees cover in an around six major cities (Lahore, Faisalabad, Rawalpindi, Gujranwala, Multan and Sialkot).

VIII. URBAN FORESTRY:

69. Lahore is facing dangerous air pollution, resulting in deaths to citizens. High air pollution and smog are admitted in the Policy, at page 15, wherein it is admitted that afforestation is highly required to combat air pollution, mitigate carbon and improve precipitation. The city is choking and the need for more than 10 million people is

urban forestry based on international best practices, urban forestation which makes the cities in Punjab healthier not for beautification.

70. At the moment, there is no Urban Trees Plantation Policy regarding plantation of trees at urban areas because the Policies only refer forest land and other urban, private and agricultural land are not covered under the issue in hand. Nevertheless, under the Punjab Development of Cities Act, 1976 as well as Lahore Development Authority Act, 1975 and other laws regarding development of societies, there is no clear cut provision for plantation of trees as already held by this Court in "ANJUM IRFAN v. LAHORE DEVELOPMENT AUTHORITY through Director-General and others "(PLD 2002 Lahore 555).

IX. PUBLIC FUNCTIONARIES AND THEIR DUTIES:

A. PUNJAB RULES OF BUSINESS, 2011

SR. #	Department/ Authority	Administration of law/rule/policy	Relevant Provisions
1.	Environment Protection Department	Punjab Environment Protection Act, 1997	Section 12 states that no proponent of a project shall commence construction which is likely to cause an adverse environmental effect which is defined under Section 2 (i) of the Act, 1997.
		Policy on Controlling SMOG, 2017	Already discussed herein above.
		Punjab Environment Policy, 2015	Already discussed herein above.
		Punjab Clean Air Action Plan [Draft]	Already discussed herein above.
2.	Forestry, Wild Life and Fisheries Department	Punjab Plantation and Maintenance of Trees Act, 1974	Already discussed herein above.
		Forest Act, 1927	Already discussed herein above.
		Punjab Village Forest Rules, 2013 (Made Under Section 76 of Forest Act, 1927)	Already discussed herein above.
		Punjab Forestry Sector (Forest Watershed.	This Policy issued by Respondent No.2 in th year 1999 states that

Rangelands and Wild Life) Police, 1999	only 3% of land in Punjab Province is under tree covery whereas for a balanced economy an area of 20-25% should be under forest. The said Policy Statement sets out the obligations to be performed by Respondents No.2 to 7 as follows:-- (i) Tree and vegetatoin cover shall be increased. (ii) Proper land use planning programme based on land capability classificaitn shall be formulated. iii) User rights in public forests shall be rationalized. (iv) Land and irrigation water shall be utilized through on-farm water management, appropriate agro forestry practices and Joint Forest Mangement of the land resource in the public sector irrigated plantation. (v) Land under water logging and salinity shall be rehabilated through plantation of suitable tree species (vi) Appropriate measures to be adopted to combat and arrest desertification process by planting trees. (vii) Communal and private forest shall be covered by a tenable scientific management and appropriate legal cover. (viii) To ensure maximum private investment is encouraged in forestry production through joint ventures and long term leases etc. (ix) To provide suitable incentives to encourage large scale afforestation

			on farms. (x) To undertake mass awareness, public education in respect of forests, environment, wildife, watershed values etc. through electronic media and farm level research. (xi) Development of suitable habitat and maintenance for conservation and propagation of wild flora and fauna of the province. (xii) Legislative reforms shall be carried out to improve enforcement of laws through improved leglative provisions. (xiii) To undertake solid steps to maintain pollution free livable environment and stand firmly by the international commitments as enshrined in various international treaties for the betterment of humanity, masses in Pakistan and province of Punjab. (xiv) Establishment of Protected Areas scientific management plans to conserve natural ecosystems in the province. (xv(Mandatory Environmental Impact Assessment for forestry and other projects
3.	Housing, Urban Development and Public Health Engineering Department	Lahore Development Authority Act, 1975 Lahore Development Authority Private Housing Scheme Rules, 2014.	Already discussed herein above. a) Rule 2(q) defines "landscape plane" to mean a plan showing visible feature in an open space in a scheme such as walk way, green area fountain, flower belt, grass and trees. b) Rule 15 provides that a sponsor shall, submit

			to the Authority, a landscape plan for parks, open spaces, including tree plantation on both sides of a road and in open spaces.
		Punjab Development of Cities Act, 1976	Already discussed herein above.
		Parks and Horticulture Act, 2012	Already discussed herein above.
		Lahore Canal Heritage Act, 2013	Section 3(5)(b) prohibits felling tapping, burning or in any way damaging or destroying, taking, collecting or removing any plant or tree situated on the Lahroe Canal except with prior permission in writng from the PHA Lahore. Section 9 prescribed punishment with imprisonment of not less than 1 year and not more than 5 years or with fine.
4.	Local Government and Community Development Department	Punjab Local Government Act, 2019. Walled City of Lahore Act, 2012.	Already discussed herein above. Section 2(xl) define "urban open space" to include gardens, parks, playgrounds available to publico. Section 7(2)(viii) empower the Walled city of Lahore Authority to develop and maintain an open urban space. Section 2(xii) defines "environment" to mean air, physical space, urban farms, sensory qualities including vistas, views and sights. Section 7(2)(ix) and (xi) empower the Walled City of Lahore to conserve and upgrade the environment as well as to prepare, implement and enforce schemes for environmentsl

			improvement.
5.	Planning and Development Department.	Cholistan Development Authority Act, 1996.	Section 15(k) of the Act prescribes the conservation, preservation of forests and multiplication of wild life and natural vegetation to be a function of the Cholistan Development Authority. Section 16(2)(iv)(e) empowers the Authority to regulate the falling, girdling or burning of any tree or timber. Section 16(2)(v) empowers the Authority to undertake breaking up of land, construction of water courses and tree plantation.
6.	Services and General Administration Department.	The Infra-Structure Development Authority of the Punjab Act, 2016.	Section 2(j) defines the term "road" so as to include express ways, highways, motorways, public roads, cart-ways intended to use for general public and includes culverts, bridges, site drains, fences, posts and trees on any road. Section 6(2)(q) empowers the Infra-Structure Development Authority of the Punjab to develop and maintain green areas including parks along the road.

B. The Forest Act, 1927

71. Under Section 4(1) (c), the Provincial Government is required to appoint the Forest Settlement Officer (the "Forest Officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same. To preserve the forest, the Forest Settlement Officer is empowered to not allow the fresh clearings for cultivation or for any other purpose except in accordance with the prescribed rules (Section 5); to stop, with previous sanction of the Government, any public or private way or watercourse in a reserved forest,

provided that a reasonably convenient substitute for it already exists, or has been provided or constructed by the Forest Officer (Section 25); and to seize the forest produce in respect of which an offence is committed together with any tool, carriage wagon, cart or other vehicle for transport and anything used in the commission of the offence (Section 26(8)).

72. Under Section 72, the Provincial Government may invest any Forest Officer with powers (a) to enter upon any land and to survey, demarcate and make a map of the same; (b) of a Civil Court to compel the attendance of witnesses and the production of documents and material objects; (c) to issue a search-warrant under the Code of Criminal Procedure, 1898; and (d) to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence. Further, any evidence recorded under above (d) is admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

C. Punjab Local Government Act, 2019

73. Section 150 (1) (j) states that all trees, plants and flowers on roadsides and other places maintained by the local government constituted under Section 15 shall vest in a local government. Further, following two entries are present in Part II of the Third Schedule of this Act stating functions of a Metropolitan Corporation, Municipal Corporation and Municipal Committee: (dd) Environmental Health, awareness and services …. (ee) Parks and landscape development. Similarly, following two entries are present in Part II of the Fourth Schedule of this Act stating functions of a Town Committee: …. (z) Environmental health, awareness, services, …. (aa) Parks and landscape development. Moreover, following two entries are present in Part II of the Fifth Schedule of the Act stating functions of a Tehsil Council: …. (dd) Environmental Health, awareness, services …. (ee) Parks and landscape development

X. OFFENCES AND PENALTIES

74. To ensure protection and safety of forests, Section 26 of the Forest Act provides for offences and penalties relating to reserved forest. Under this section, a person, who in a reserved forest: (a) makes fresh clearing which is prohibited under Section 5; (b) kindles fire or burns fire in the manner which endangers the forest or sets on fire any plant or tree; (c) causes damage by negligently felling a tree, cutting or dragging any timber; (d) cuts or damages any plant; (e) fells, girdles, lops, taps or burns a tree or strips off a bark or leaves of a tree or otherwise damages the same; (f) quarries stones, mines, minerals, burns lime or charcoal, or collects or removes any forest produce; (g) constructs any building, structure, hutment or cattle pen; (h) clears or breaks up any land for cultivation or any other purpose; (i) encroaches upon the forest land; (j) causes damage or tempers with barbed wire, or fence erected in or around the forest; (k) contravenes any rules relating to hunting, shooting, fishing, or setting up traps or snares; (l) kindles, keeps or carries

any fire except during such season as the forest officer may notify in this behalf; (m) trespasses or pastures cattle, or permits cattle to trespass; (n) removes or causes damage to the soil, water, natural vegetation (shrubs, herbs and plants), fish, wild animals and wild birds; (o) damages any structures such as water channel, check dam, embankment, reservoir or pond; (p) changes the land use for the purpose other than development, preservation or conservation of the forest or park; and (q) installs a saw mill, charcoal kiln or establishes timber or firewood depot or operates any mechanical aid designed to cut, fashion or convert a tree or timber or fabricates wood into articles of furniture, building materials, joinery or articles of domestic or commercial use in or within five mile radius of the forest; is liable for punishment of up to six (6) months or with fine, calculated on the basis of value of the damage caused due to such offence, or with both. Section 26(4) of the Forest Act further extends this punishment to one (1) year or double of the fine or with both in case the offence is committed after sunset and before sunrise, or where the person has been previously convicted for a forest offence.

75. The only defence/exception to these offences is the permission in writing of the Forest Officer, and any existing right under the Forest Act, rules, grant or contract made by the Government (Section 26(5)). Further, the Punjab Government is empowered to suspend the exercise of any right of pasture or to forest produce for such period as it may determine, in case the fire in a reserved forest is caused willfully or by gross negligence (Section 26(6)).

76. Section 33 of the Forest Act provides the offences relating to the "protected forests", and states that a person, who in a protected forest (a) fells, girdles, lops, taps or burns a tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages, the tree; (b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest produce; (c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land of the forest; (d) sets or kindles fire without taking reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of the forest; (e) leaves any fire burning in the vicinity of any reserved tree or closed portion of the forest; (f) fells any tree or drags any timber and damages any reserved tree; (g) permits cattle to damage any reserved tree; and (h) infringes any rule made under section 32; shall be liable for punishment - which are similar to the punishments provided for the "reserved forests" in Section 26(2) to (6).

77. Section 3 of the Trees Act requires the occupier to plant three (3) trees per acre by the occupier in the prescribed manner, and maintain the same. Section 4 imposes the penalty, in case of contravention of Section 3, of rupee one per tree, after giving an opportunity of hearing to the person concerned.

78. Section 21 of PHA Act prohibits any person to (a) use any green belt or green area for any purpose except casual use without prior permission in writing of PHA, (b) discharge any waste water or sewage on any public park, green belt or green area, (c) throw or dispose of any litter or garbage in any public park, green belt or green area, (d) install or exhibit any billboard, sky sign, outdoor advertisement or advertisement or allow the installation and exhibition of any billboard, sky sign, outdoor advertisement or advertisement in any property under his control without the permission of PHA, (e) cut, damage or remove any tree on public land or any place outside a private premises without prior permission in writing of PHA, except the routine or reasonable trimming of a tree outside the private premises by the occupant himself or under intimation to hi m, and (f) take any part in the publication, installation or display of any billboard, sky sign, outdoor advertisement, advertisement, or which is indecent or against public morality or which may incite public disorder.

79. Section 23 of PHA Act provides the offences, penalties and procedures, and makes an offence under the PHA Act as "non-bailable" but the police shall not take cognizance of the offence except on the information received from an authorized officer of the Authority. Further, PHA may instead of filing information before the police, file a complaint before a Magistrate authorized to take cognizance of an offence under the PHA Act. The procedure for the trial of offences under the PHA Act is the same as is laid down in the Code for summary trial. Similarly, under Section 24, any person may file a complaint in the prescribed format to PHA regarding the illegal use of any public park or green belt or green area or any other violation of the PHA Act and PHA on receipt of such a complaint is required to inquire into the same and shall take such action as may be necessary under the PHA Act. Any officer authorized by PHA may take all such actions as may be necessary for enforcement of the PHA Act, rules or regulations including removal of encroachments, cessation of hazardous or unauthorized trade in a public park, green area or green belt, removal of unauthorized billboards, sky signs, outdoor advertisements or advertisements, and removal or cessation of unauthorized construction or stoppage of unauthorized land use in or on a public park, green belt or green area (Section 25). Further, any person authorized by PHA may enter and survey any premises or land at a reasonable time and after due notice of inspection and survey for the purposes of the PHA Act, rules or regulations. The police is also required to render such assistance as PHA may require in the discharge of its functions under the PHA Act (Section 28).

80. According to Second Schedule, of LDA Act causing harm to the environment is an offence punishable under Section 35. According to the Schedule of Punjab Development of Cities Act, 1976; Part-A, causing harm to the environment is an offence punishable under Section 34.

XI. DETERMINATION BY THE COURT

81. This petition was filed in order to highlight inactions of the Respondents Department for not implementing the laws, policies and strategies regarding protection of forest of Pakistan and to implement them by passing certain directions to the concerned quarters to perform their duties as per law. Since Superior Courts of Pakistan, in various judgments, have protected the fundamental rights of citizens of Pakistan regarding protection and conservation of natural resources including forest therefore, this Court has noted above about the laws and mandatory duties of the Authorities/Departments mentioned under respective laws that should be taken seriously while implementing the policies including National Climate Change Policy, 2012, the National Forest Policy, 2015, the Forest Policy Statement, 1999 and Punjab Environment Policy, 2015. Had above-mentioned laws and polices properly been implemented by the Respondents Departments in letter and spirit with proper mechanism and procedure, the forest of Pakistan could have been saved for further depletion and deforestation. Since the Pakistan is signatory of various international laws, environmental treaties and conventions and due to that various laws and policy have been made to protect the environment, conserve and preserve the forests but in this regard these policies/laws have not been implemented which the Respondents are duty bound to adhere to their own policies under the doctrine of sovereignty in the light of case law reported "DEWAN SALMAN FIBRE LTD. v. FEDERATION OF PAKISTAN and others" (2015 PTD 2304), "NATIONAL BANK OF PAKISTAN v. IFTIKHAR RASOOL ANJUM and others" (2017 PLC (C.S.) 453) which was upheld by the Hon'ble Supreme Court of Pakistan in "BAHADUR KHAN and others v. FEDERATION OF PAKISTAN through Secretary M/o Finance, Islamabad and others" (2017 SCMR 2066) in which it has been held that great importance is attached to government adhering to sovereign commitments made by it, whether in form of statutory orders or notifications issued by it or in the shape of policies announced by it. Commitment made on behalf of government should neither be lightly disregarded nor deliberately ignored. Orderly development of a civilized society requires that citizens should be entitled to place implicit faith and confidence on representations which are made by or on behalf of duly constituted governmental authorities. The aforesaid case laws have binding effect on the Respondents Department to follow if they are read with relevant laws and to this effect, action could be taken to preserve the trees and forest across Pakistan.

82. This Court noted that earlier there was no policy for plantation of trees in urban cities, towns and under the directions of this Court, concerned Departments prepared Urban Trees Plantation Policy which is being followed in letter and spirit resulting into massive plantation of trees across the Punjab and that has also been highlighted in various daily publications/media to show progress made so far. This has been much appreciated under aforementioned doctrine, Urban Plantation Policy shall also be followed and implemented by the concerned authorities and housing societies withoutfail for plantation of trees outside houses because

commitment made under the doctrine of sovereignty should neither be lightly disregarded nor deliberately ignored. The principles and doctrines of Public Trust and Dubio Pro Natura have to be kept in mind while making further policies in this regard. While deciding this case, this Court mentioned relevant laws, policies, principles and judgments but they need to be followed by the respective authorities which are binding on them under Articles 189 and 201 of the Constitution because the principles annunciated by Superior Court of Pakistan are binding on all the courts and authorities in Pakistan.

XII. DIRECTIONS:

83. In view of the above, this Court allows this writ of mandamus under Article 199(1(a) (i) of the Constitution and direct the Government Departments performing their functions within jurisdiction of this Court in connection with the affairs of Federation and Province of Punjab and other local authorities under the respective laws, mentioned in this judgment to do anything, they are required by law to do IN ORDER TO SAFELY MANAGE, CONSERVE, SUSTAIN, MAINTAIN, PROTECT AND GROW FORESTS AND PLANT TREES IN URBAN CITIES which are as follows:

(1) All the applicable laws and the relevant directions and judgments of the Hon'ble Supreme Court and High Court mentioned herein above, shall be implemented in letter and spirit in order to plant, protect and preserve the forest.

(2) All the Respondents shall take steps to protect, manage and conserve the forests and trees in the Urban Areas, in fact make manifest and obvious efforts, to enlarge the forests and trees in Pakistan and the Punjab.

(3) The requirement for planting three (3) trees per acre by the occupier of a land (Section 3 of the Trees Act) and the penalty of one (1) rupee per tree (Section 4 of the Trees Act) may be revised.

(4) Every responsible Ministry, Division, Department and Authority etc. shall publish the yearly report in which it shall highlight the expansion of the forest area, tree plantation campaign in the Urban Areas and also the action taken by them in compliance of the said laws.

(5) The competent authority is directed to impose the penalty against the relevant officers for omission of their duties, if any, under the respective laws as well as the disciplinary laws and also against the public for cutting the trees.

(6) The Secretary Cooperative and Registrar Cooperative shall issue directions to the housing societies and authorities for (i) planting at least two (2) trees in the green belt in front of each house mentioning in their allotment letters and bye-laws of the society (ii) impose heavy penalties and punishments for cutting the same at least

Rs.25,000/- per tree and to (iii) monitor the trees through respective officers of the society/authority. The treatment and maintenance of the trees will be the sole responsibility of the society/authority concerned.

(7) The Punjab Government is also directed to revise and amend such laws where clear direction and command is not entrusted to any authority as under the Punjab Rules of Business, the Secretary Forest, the Secretary Cooperative and the Local Government etc. have clear mandate to make laws and policies, under Schedule-II of the Punjab Government Rules of Business.

(8) It was noted during the hearing that due to the efforts of the Government and other Departments, this year massive tree plantation took place. The same or more effort must be done and monitored by the relevant authorities each year through proper book logging and designated officers of the area to count, monitor, manage trees every week and submit report and status of the same to the Head of the society/authority for publishing in their annual report. The relevant authority should also number the trees to keep the track of each tree in urban areas (streets, road, parks, market and green belts).

(9) The Department shall, through the media and other means, inform the public and create awareness, including lodging a complaint for any violation of the law for cutting of the trees to the concerned person who maintains data and manages trees and they will take strict action through respective laws. Every area shall have a person to file complaint depending on the jurisdiction of the area and duties of the officers. The Urban Plantation Policy shall be consulted by all the departments.

(10) The Local Government, PHA, DHA, LDA and all others authorities/societies, Secretry Forest and other relevant authorities are directed to define a mechanism for urban forestation by learning from Urban Plantation Policy.

(11) A specific officer may be appointed in a designated area to deal with the issues related to the trees and forest, as the case may be. If any citizen in their societies or locality feel the need of plantation of trees, such relevant officer may address grievance of the citizen by planting the requisite number of trees by the required authority otherwise they will contact PHA which shall have designated officers for doing such along with Forest Department. These trees then shall be again monitored and managed by the said authority.

(12) All the authorities, including DHA, LDA, MDA, FDA and other relevant authorities, are directed to make and adopt comprehensive policies with respect to plantation of trees in urban areas with experience of Urban Plantation Policy and make their own policy under respective laws and immediately start planting of trees with the request to PHA and other departments and maintain the same

by imposing fine and penalty to the officers of the area or any citizen.

(13) The school, colleges, higher education institutes, hospitals, parking sites etc. are specifically directed to make policy for planting the trees in open spaces and waiting areas/car parks.

(14) The Government of the Punjab through its respective departments shall make laws in imposing penalty and heavy fine for cutting, removing and damaging any tree without permission of the concerned authority including EPA, PHA and consider all mitigating measures at the time of public hearing of any project such as Initial Environmental Examination (IEA) and Environmental Impact Assessment (EIA) .

84. Before parting with this judgment, I appreciate the efforts of all Government Departments whose representatives appeared before this Court from time to time and complied with orders under doctrine of continuous mandamus and prepared first ever Urban Trees Plantation Policy for plantation of trees in urban areas including roads, streets, markets, parks and car parks etc. I would also appreciate the efforts of Law Officers, learned counsel, social activists, who played important role for protecting future of citizens of Pakistan regarding massive forest cover and implementation of Urban Trees Plantation Policy throughout the Province of Punjab to have healthy life free from pollution as provided under Article 9 of the Constitution which was introduced by the Hon'ble Supreme Court of Pakistan in "MS. SHEHLA ZIA AND OTHERS v. WAPDA" (PLD 1994 SC 693).

MWA/A-76/L Order accordingly

Case :10 Raja Zahoor Ahmed and others---Petitioners

2022 S C M R 1411

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

Raja ZAHOOR AHMED and others---Petitioners

Versus

CAPITAL DEVELOPMENT AUTHORITY through Chairman and others---Respondents

Civil Petitions Nos.3347 to 3351, 4229 and 4263 of 2021, decided on 20th May, 2022.

(Against the consolidated judgment of Islamabad High Court, Islamabad dated 16.02.2021, passed in W.Ps. Nos.4126 of 2015 and connected cases)

Date of hearing: 20th May, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The case stems from a decision of the Board of Directors ("Board") of the Capital Development Authority ("CDA") dated 13.02.1995 to commercialize the residential properties of the petitioners situated in front of the Industrial and Trading Centre, Sector G-9/4, Islamabad. The Board soon realized that the decision dated 13.02.1995 would be in violation of the Master Plan of Islamabad. Taking note of the fact that the decision dated 13.02.1995 had not till then been implemented as conversion rate could not be finalized, the Board through a fresh decision dated 05.10.1995 rescinded its earlier decision dated 13.02.1995. Subsequently, the CDA issued notices to the petitioners for non-conforming use of their properties. These notices were challenged by them, claiming in their writ petitions that their residential properties stood commercialized on the basis of the decision dated 13.02.1995. They also asserted that they could not be asked to pay conversion fee in lieu of such commercialization. Additionally, other petitioners filed civil suits seeking declaration that their properties had acquired commercial character. The applications under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure filed along with the suits were dismissed by the Trial Court; appeals also met the same fate; and, then, civil revisions were preferred before the High Court. The High Court through the impugned consolidated judgment dismissed the writ petitions and civil revisions filed by the petitioners. The petitioners now seek leave to appeal against said judgment of the High Court.

2. We consider in this case whether the decision of the Board dated 13.02.1995 was taken in the exercise of lawful authority and/or whether such decision had created any rights in favour of the petitioners. Also, the facts and circumstances of the case merit attention to the relationship between urban development and climate change, and the role of urban planning and development agencies.

3. The Capital Development Authority Ordinance 1960 ("Ordinance") was enacted to establish the CDA for the purpose of making all arrangements for the planning and development of Islamabad. The CDA was required to prepare a master plan and a phased master programme for the development of the 'Capital Site' and a similar plan and programme for the rest of the 'Specified Areas'.[1] All such plans and programmes were required to be submitted to the Federal Government for approval.[2] A Master Plan was prepared at the time of the inception of the city and subsequently different sectors were set up under different schemes. The Master Plan aimed at a rationalized reproduction of the attributes of the city by establishing the same sized and carefully organized spatial structures of the central facilities and public spaces as a coherent urban design scheme as evident in the detailed designs of different sectors.[3]

4. We see that the properties owned by the petitioners do not fall within the commercial area of Sector G-9 as set out in the Master Plan or the Scheme prepared thereunder. They seek a change in the status of their properties from residential to commercial. However, such a change is not permissible under the Ordinance without a change in the Master Plan which can only be done with the approval of the Federal Government. Any scheme prepared relating to land use, zoning and land reservation, among other things, is required to be in pursuance of the Master Plan.[4] We agree with the impugned judgment of the High Court that the CDA has no discretionary power to give effect to any scheme or accord any permission for change of status or use of property in breach of the Master Plan. The Master Plan is protected under the Ordinance and the Ordinance obliges the CDA to regulate the use of land pursuant to the Master Plan. The prohibition contained against the use of land for a purpose other than the one specified in the Master Plan is absolute. There is, therefore, no escape from the conclusion that the decision of the Board dated 13.02.1995 was taken without lawful authority. The Board itself realized that the decision dated 13.02.1995 would be in violation of the Master Plan of Islamabad and, thus, rightly rescinded it through the decision dated 05.10.1995.

5. We also agree with the High Court that no vested rights could be created under the decision dated 13.02.1995. The Board in which vests the management of the CDA was not competent to allow any change in the character of the properties of the petitioners in violation of the Master Plan. The Master Plan could only be amended with the approval of the Federal Government. The decision dated 13.02.1995 was in breach of provisions of the Ordinance and in conflict with the Master Plan. It was taken without lawful authority

and was rightly undone by the Board. Moreover, the CDA did not implement the decision dated 13.02.1995. It did not approve any change in the status of the properties owned by the petitioners during the period this decision remained in the field. The petitioners cannot, in the given circumstances, claim to have taken any decisive steps in pursuance of the decision dated 13.02.1995. The doctrine of locus poenitentiae is not, therefore, attracted to their case.

Urban Planning, Climate Change and the role of the CDA and other Urban Development Authorities

6. The importance of regulating land use for orderly urban development cannot be understated. Planning and regulating building construction activity in urban environments is emphasized around the world in the interest of organized growth of cities. It is an exercise based on scientific research and experience which recommends in a comprehensive manner from social, economic, environmental, infrastructure capacity, aesthetic, and other relevant aspects, the best present and future uses of geographically specified land areas called zones.[5] Zoning is a public welfare management tool employed in urban planning to serve the city's interests.[6] Public welfare today would naturally encompass the pressing issues of the time i.e., climate change; environmental degradation; food and health safety; air pollution; water pollution; noise pollution; soil erosion; natural disasters; and desertification and flooding having an appreciable impact on public health, food safety, natural resource conservation, environmental protection, social equity, social choice, etc.[7] Any initiative to revise land use regulations must be based on the aforesaid considerations in order to ensure that urban development standards stay relevant to current issues of the community.

7. The necessity of planned urban development is accentuated in the vulnerable age of climate change. Climate change poses a series of interrelated challenges to the country's most densely populated places: its cities. Many cities depend on infrastructure, like water and sewage systems, roads, bridges, and power plants, that is aging and in need of repair or replacement. Rising sea levels, storm surges, heat waves, and extreme weather events will compound these issues, stressing or even overwhelming these essential services. Climate change and its impacts threaten the well-being of urban residents. Essential infrastructure systems such as water, energy supply, and transportation will increasingly be compromised by interrelated climate change impacts. The nation's economy, security, and culture all depend on the resilience of urban infrastructure systems. Direct and interacting effects of climate change will expose people who live in cities to multiple threats. Climate changes affect the built, natural, and social infrastructure of cities, from storm drains to urban waterways to the capacity of emergency responders. Climate change increases the risk, frequency, and intensity of certain extreme events like intense heat waves, heavy downpours, flooding from intense precipitation and coastal storm surges, and disease incidence related to temperature

and precipitation changes. The vulnerability of urban dwellers multiplies when the effects of climate change interact with pre-existing urban stressors, such as deteriorating infrastructure, areas of intense poverty, and high population density.[8]

8. Pakistan falls amongst the most vulnerable countries and is seriously hit by climate change, even though it has negligible contribution towards greenhouse gases (GHGs). The National Climate Change Policy 2012 underlined the seriousness of this existential threat. Climate resilient development and adaptation[9] was the focus of this policy document though as a responsible member of the global community due importance was also accorded to mitigation[10] efforts. However, after Paris Climate Accord 2015, Pakistan has updated its climate policy and the focus of the National Climate Change Policy 2021 is equally placed on adaptation and mitigation with the major emphasis on nature-based solutions. Such solutions include vegetal cover expansion, coastal resource management, and mangrove and natural reef ecosystem protection. Infrastructure-based solutions comprise climate-proofing infrastructure, including storm drainage systems, water supply and treatment plants, as well as the protection or relocation of energy or solid waste management facilities. Some coastal cities may also need to plan for infrastructure development, protection and/or relocation related to a rise in sea level.[11]

9. Our national response to climate change, inter alia, is to continuously evolve innovative and smart "adaptation" strategies. Our adaptation climate change strategy requires that Pakistan and its public institutions make climate resilient policies and rest its decisions on sustainability. Our infrastructures must be strong enough to withstand climate change e.g., heavy rains, floods, earthquakes and other extreme weather. Shutting eyes to the ominous signs of climate change will plunge us into a world that may not be able to sustain fundamental human values. It could affect our basic physical and larger social needs including harnessing and consuming energy, water and food as well as habitation, travelling and communication potentialities. It is doubtful that our early town planners were driven by climate considerations. However, climate must, in the wake of climate change, form a basic determinant of urban planning and design.[12] Climate-resilient development in cities of all sizes is crucial for improving the well-being of people and increasing the life opportunities of future generations. Any change in the Master Plan to an urban scheme without taking account of the climate factor would be detrimental.

10. The concept of "the Right to the City"[13] has become a common framework for articulating alternative visions of the city and making a host of demands on issues related to urban equity and social justice. It has also been used for making urban governance, planning, and budgeting more participative and inclusive. The Right to the City is interdependent to all recognized international human rights; and its conception is based on an integral view, which

includes civil, political, economic, social, cultural and environmental rights enshrined in the International Human Rights Treaties.[14]

11. Effect of climate change on cities, affects its residents and their core fundamental rights to life, dignity and property guaranteed under Articles 9, 14, 18 and 23 of the Constitution of the Islamic Republic of Pakistan, 1973. In an urban living, climate change can impair the quality of life of a person, offend his dignity and deprive him of his property or the right to fully enjoy his property. Incorporating adaptation, climate resilience[15] and sustainability, in the policy decisions by the urban development authorities, are essential to actualize the fundamental rights of the people and therefore form an integral part of the fundamental human rights of the people of Pakistan. In the face of the grave existential threat of climate change, adaptation, climate resilience and sustainability assume the role of a constitutional necessity and of an overarching constitutional obligation.

12. Our urban development authorities need to ensure that their urban development plans consider and support adaptation, climate resiliency and sustainability. Before putting up a proposal for amendment or modification in the Master Plan or a scheme or before proposing a new development plan or scheme, the urban development authorities need to seriously consider the climate change angle. Any conversion of residential neighbourhoods to commercial zones is likely to lead to adverse environmental consequences on account of increased human and vehicular traffic and activity, and should not be permitted without proper investigation, forethought and remedial measures to control the soaring thermal environment. It is high time that our urban planners prioritize the climate factor in their development approaches to address the triple planetary crises of Climate Change, Air Pollution and Loss of Biodiversity. The CDA shall ensure to factor in adaptation, climate resiliency and sustainability into their plans, policies and decisions in order to protect the constitutional rights to life, dignity and property of the residents of Islamabad, in particular, and people of Pakistan, in general.

13. In view of the above, we do not take any exception to the judgment of the High Court. Consequently, leave is refused and the petitions are dismissed. Copy of this Order shall be dispatched to the Chairman, CDA for information, guidance and compliance.

MWA/Z-9/SC Petitions dismissed.

Case 11: Chaudhry Awais Ahmed Through (PILA)-Petitioner

2023 C L D 618

Present: Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

PUBLIC INTEREST LAW ASSOCIATION OF PAKISTAN registered under the Societies Act, 1860 through authorized person Chaudhry Awais Ahmed---Petitioner

Versus

PROVINCE OF PUNJAB through Chief Secretary, Civil Secretariat, Lower Mall, Lahore and others---Respondents

Civil Petition No. 55 of 2020, decided on 2nd February, 2023.

(Against order dated 18.11.2019, passed by the Lahore High Court, Lahore, in W.P. No. 56780 of 2019)

Date of hearing: 2nd February, 2023.

JUDGMENT

AYESHA A. MALIK, J.---This Petition impugns order dated 18.11.2019, passed by the Lahore High Court, Lahore (High Court) wherein the Petitioner, in public interest, challenged the lack of environmental approvals for grant of small-scale mining licences or leases. The issue raised is the grant of small-scale license or lease for mining minor minerals like sand, gravel and sandstone which are issued without considering the impact on the environment. The Petitioner's argument is that the Punjab Mining Concession Rules, 2002 (the Rules) sets out the process for award of small-scale mining licences without requiring any approval by the environmental authority, even though section 12 of the Environmental Protection Act, 1997 (the Act), requires that all projects need environmental approval from the Environmental Protection Agency (EPA). The counsel explained that as per the definitions and the provisions of the Rules, both large scale and small-scale mining operations are projects for the purposes of section 12 of the Act. Consequently, as per section 12 of the Act proponents of projects must obtain environmental approvals from the EPA.

2. The Respondents explained that during the pendency of this dispute, meetings were held to resolve the issue and finally on 27.12.2019, it was agreed that the Mines and Minerals Department (MMD) shall submit Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) reports before each project and shall obtain environmental approval for the project as per

section 12 of the Act, prior to the commencement of the bidding process and issuance of the offer letter to a successful bidder. This includes small-scale mining license or lease. It was also agreed that this process will be used by the MMD to monitor the terms and conditions of the environmental approvals. Further that the EPA will provide its expertise in monitoring the terms and conditions of the environmental approvals and in the event of any violation they will take action against those who violate the terms and conditions. Thereafter, pursuant to section 33 of the Act, the Punjab Environmental Protection (Review of Initial Environmental Examination and Environmental Impact Assessment) Regulations, 2022 (Regulations), was promulgated and notified on 16.12.2022. As per Regulations Nos. 3, 4 and 5, it is clearly stipulated as to which projects require an IEE and which require an EIA. Therefore, they state that the matter in issue has been resolved.

3. Counsel for the Petitioner does not dispute the meeting and or the issuance of the Regulations. However, he argues that no steps have been taken to ensure the enforcement of these Regulations as there is no procedure set out to clarify who has to obtain the IEE or EIA for the projects. He explained that as per practice, once the bidding takes place, the MMD requires the successful bidder to obtain the necessary environmental approval. He states that this negates the purpose of obtaining the IEE or EIA and is also against the spirit of what was decided on 27.12.2019. As per his contention, there should be guidelines and Standard Operating Procedure (SOP) set out to give clarity and timelines within which the approval should be obtained and the terms of the environmental approval should bind the successful bidders of the projects so that they abide by it.

4. Pakistan has the world's second largest salt mines and coal reserves, fifth largest copper and gold reserves and second largest coal deposits with gravel, sand and limestone deposits widely distributed in all four provinces. The country's GDP owing to mining alone has increased from Rs.309,823/- million in 2020 to Rs.663,084/- million in 2021. There is huge potential in the mining sector for the country's economy; however, it cannot be achieved at the expense of the environment. We have examined the Regulations promulgated vide Notification dated 16.12.2022. As per these Regulations, projects listed in Schedule-I(D) require an IEE which include commercial extraction of sand, gravel, limestone, clay, sulphur and other minerals not included in Schedule-III and with a total cost of less than 500 million. It also includes exploration of coal, gold, copper, sulphur and precious stones. Similarly, projects listed in Schedule-II(C) require an EIA which includes mining and processing of coal, gold, copper, sulphur and precious stones. Hence, the Regulations clearly specify the requirement of an IEE or EIA, which is a fundamental and basic step before a project starts, so as to ensure that an adverse effect on the environment has been considered and addressed. This is because even the exploration and mining of minor minerals has an adverse impact on the environment, which includes deforestation, pollution, production of

toxic waste water, loss of habitats and disruption of the ecosystem. In particular, with reference to sand mining; deforestation, loss of biodiversity, soil erosion and acid drainage are some of the serious environmental impacts, which have to be given due consideration. Surface mining creates health hazards for miners and local communities as well as gives rise to air pollution and produces toxic waste water, and causes droughts all of which must be catered for. In this context, climate change is one of the biggest global threats and the combination of surface mining and climate change becomes a serious threat for the ecological system. Hence, the mining sector must adopt climate proof mining policy which must consider how climate change will impact mining areas so that the climate change risks are integrated into the environment assessment. Therefore, without an IEE or EIA, these matters are totally neglected. Hence, special attention must be given to all environmental aspects even with reference to the mining of minor minerals.

5. The relevance of the IEE and EIA cannot be ignored. Not only do the IEE and EIA consider the environmental impact of the project but can also include standards and initiatives to improve sustainability of the sector . This can be vital in projects of mining under the MMD. They also prescribe mitigation measures and put in place a monitoring method through an Environment Management Plan (EMP). The EMP provides the basic framework for implementing and managing mitigation and monitoring measures. It identifies the environment issues, the risks and recommends the required action to manage the impact. This is vital because not only does the miner know what its obligations are, it also gives the MMD and the EPA a framework to follow and to ensure its compliance. Hence, all factors considered the IEE and EIA ensure that the project is sustainable and all possible environmental consequences have been identified and addressed adequately.

6. In this context, we have examined the Regulations and agree with the contention of the learned counsel for the Petitioner that there is no timeline provided within which these approvals are to be obtained nor does it specify any process to bind the successful bidder of the project to the terms of any EMP or other measures provided for in the IEE or EIA. However, the Regulations do clarify that the proponent of the project has to obtain the IEE or the EIA and in this case, the proponent of the project will always be the MMD, hence the practice of requiring a successful bidder to obtain an IEE or EIA after bidding of the project totally negates the purpose and impact of these reports. The impact on the environment must be looked into before bidding commences by the MMD and at the time of bidding a bidder must know the terms set out in the IEE or EIA that they are bound by and are required to comply with especially the mitigation measures and the EMP. Hence, it is the MMD that is responsible for obtaining these reports before initiating the process for bidding of the said projects. In this regard, it would be useful for the MMD to provide guidelines and SOPs to facilitate this process and also provide penalizing provisions within the license or lease for any

violation of the EMP so as to ensure compliance. While mining is an essential part of the economy, it must be conducted in a responsible and sustainable manner to minimize its impact on the environment. By implementing best practices and adhering to strict guidelines and developing a climate proof mining policy, it can be ensured that mining continues to provide for the economy while also protecting the health of our planet and its inhabitants. Economic growth is important but it must be achieved in a way that is sustainable and respectful of the natural systems that support it.

7. In view of the above, this petition is disposed of.

MWA/P-8/SC Order accordingly.

Case:12 Sartaj Hyder.....Respondent

2023 S C M R 459

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, C.J., Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

PROVINCE OF SINDH through Chief Minister and others---Petitioners

Versus

SARTAJ HYDER and others---Respondents

Civil Petitions Nos. 943 to 954-K of 2022, decided on 21st October, 2022.

(Against orders dated 01.09.2022 and 06.09.2022 passed by the High Court of Sindh, Bench at Sukkur and Circuit Court Larkana in C.Ps. Nos.D-1064, D-1068, D-1072, D-1075, D-1077, D-1080, D-1081, D-1083, D-1084, S-790, S-797 and S-792 of 2022)

Per Ayesha A. Malik, J; Umar Ata Bandial, CJ and Syed Mansoor Ali Shah, J. agreeing (Majority view)

Date of hearing: 21st October, 2022.

JUDGMENT

AYESHA A. MALIK, J.---The instant Civil Petition (C.P. No.943-K of 2022) along with connected Petitions impugns interim orders dated 01.09.2022 and 06.09.2022, passed by the High Court of Sindh, Bench at Sukkur and Circuit Court Larkana (High Court). The orders have been passed in petitions filed by the Respondents in relation to the relief work carried out by the Petitioners in the flood affected areas of Sindh, mainly Khairpur, Ghotki and Naushahro Feroze.

2. The Petitioners before the Court are the Province of Sindh and Director General, Provincial Disaster Management Authority (PDMA), amongst others, whose grievance against the impugned orders is that the Court has directed the relevant Commissioners to constitute a citizens committee in every Taluka of Sukkur Division, Larkana Division, Shaheed Benazirabad Division and Naushahro Feroze District and directed that such citizens committee be headed by a Civil Judge and that the said committees work under the supervision of the concerned District and Sessions Judge. The Petitioners are also aggrieved with the directions given that the citizens committees are to look after the affairs of the tent city. Mr. Hassan Akhtar, Advocate General Sindh, argued that the impugned

orders have placed the Provincial and District administration, responsible for disaster management including the provision of relief work under the control of the citizens committees which are headed by Civil Judges. Consequently, the Court has exceeded its jurisdiction as it has directed judges to enter the domain of the executive by requiring them to oversee relief work. He adds that the orders were beyond the court's jurisdiction and have placed relief efforts in the hands of the citizens committee. He explained that the Petitioners are striving hard to ensure that adequate relief is provided to the affected areas and that any lapse or deficiencies in the same are not on account of negligence or ineffective management by the Petitioners but are due to vastness of the area which is affected by the flooding coupled with the lack of resources. He elaborates that access to these areas is also an issue as roads, railway lines, bridges have been damaged or destroyed and large parts of these areas are under water. Despite these challenges, he states, that best efforts are being made and that these committees will hamper progress. He explained that distribution of relief items to the calamity affected areas is the responsibility of the District Disaster Management Authority (DDMA) and the PDMA coordinates all relevant departments for actions required in response to the floods. As per the record of the Government of Sindh, there has been an unprecedented amount of rainfall in the month of July and August 2022 with 307% and 561% over and above the annual average, respectively. He stated that the recent spell of rain has impacted the entire Province of Sindh such that 30 districts are under water which has led to loss of infrastructure and resources and has brought about a humanitarian crisis. He further submits that there is a legal framework in place under the National Disaster Management Authority Act, 2010 (Act) whereby the PDMA and the DDMA are functional and are carrying out relief work. He added that as per notification dated 24.06.2014 issued by the Government of Sindh, Services, General Administration and Coordination Department, two representatives from the business community, three representatives from the civil society organisations and two representatives from the agriculture sector are nominated as members of the DDMA. Hence, he states, that civil society is already a part of the existing framework and so there was no reason to make a citizens committee.

3. On behalf of the Respondents, who are affectees of the calamity affected areas of districts of the Province of Sindh, it is stated that no relief work is being provided in their area, hence, petitions were filed seeking directions that the Petitioners take immediate action to provide food and shelter to the residents of the area and also to drain out the water from the lands of the Respondents so that they are able to inhabit and cultivate their lands once again. Discriminatory acts of the PDMA Sukkur have been highlighted by the Respondents; one of them, has also stated that the government hierarchy is only saving the lands of the political elite by diverting water towards the villagers' land; that half of the draining disposal machines are out of order; that proper evaluation of loss of the

affected areas is also required for rehabilitation purposes. Ghulam Shabbir, Advocate High Court, one of the residents of Dadu District, has filed C.M.A. No.7960 of 2022 for impleading him as party to bring on record the destruction of his district and failure of the government in its rehabilitation. He adds that there is no presence of the PDMA or the DDMA in his district despite the fact they have prepared documents relating to contingency plan and disaster management plan yet nothing has been implemented in this area.

4. Mr. Faisal Siddiqui, ASC was appointed as amicus curiae by the Court vide order dated 05.10.2022 to assist on the issue of the courts' jurisdiction to establish citizens committee. He has submitted his report and argued that the issue raised by the Petitioners is the role assigned to judicial officers in the impugned orders and the controlling powers given to the District and Sessions Judge to supervise the citizens committees as well as the work of the tent city/relief camp. He states that the courts are always reluctant to interfere in ad interim orders except in exceptional circumstances. As per his opinion, the citizens committees are in the nature of commissions which this Court has established as was seen in cases reported as Marvi Memon v. Federation of Pakistan (PLD 2011 SC 854) where a commission was established, following the floods of 2010, for fact finding and submitting recommendations for relief efforts; Petition regarding miserable condition of the schools: in re C.P. No.37 of 2012 (2013 SCMR 764) where multiple commissions were established to carry out surveys of school functioning for fact finding purposes in order to assess the conditions and workings of the said schools; Dr. Akmal Saleemi and others v. Federal Government and others (2013 SCMR 103) where a commission was established for fact finding in a matter concerning extra judicial killings in the premises of Lal Masjid and Jamia Hafsa; and Suo Motu Case No.16 of 2011 along with C.M.As. (PLD 2013 SC 443) where a commission was constituted for fact finding purposes in order to assess if the lease agreements were legally sound. He stated that commissions are used for fact finding purposes, for putting together technical experts and also to propose sustainable solutions in environmental issues. He stated that commissions help build capacity to deal with extraordinary circumstances, as in the present case, and it will only facilitate relief work and not hamper it. He further stated that the directions of this Court vide its order dated 05.10.2022 requiring the citizens committee to continue their oversight of relief work should continue both with reference to relief efforts and the management of the tent cities as doing so will not only improve coordination efforts in this time of crisis but will also ensure that the ground-level issues are raised before the relevant authorities.

5. We have heard all parties at length. The orders impugned are interim orders and this Court normally does not interfere with the interim orders of the High Court except in exceptional circumstances, as held in the cases reported as Federation of Pakistan through Secretary, Ministry of Energy (Power Division),

Islamabad and others v. Shafiq ul Hassan and others [2021 PLC (C.S.) 292] and Dossani Travels Pvt. Ltd and others v. Messrs Travels Shop (Pvt.) Ltd. and others (PLD 2014 SC 1). Without a doubt, it is noted that, these are exceptional circumstances. While the interim orders exceed the jurisdiction of the Court to the extent of the role assigned to the judicial officers, the plight of the affectees of the 2022 floods needs attention in order to meet the needs of the flood affected population in Sindh. The biggest hindrance appears to be coordination and time frames for relief work as notwithstanding efforts made, it is neither sufficient nor is it effectively managed. The issue before the Court essentially is the exercise of jurisdiction by the High Court while creating the citizens committees and placing judges from the District Judiciary on these committees to oversee the work, being done by the committees. The role assigned to the judicial officers of overseeing the work of the executive by heading the citizens committees essentially means that the judicial officers are performing executive functions which is against the principle of separation of powers. The Constitution of the Islamic Republic of Pakistan, 1973 does not contemplate assumption of functions by one organ that essentially belongs to another. Moreover planning and strategy, coordination, monitoring and implementation are the functions of the executive and is best left for them to fulfil their duty and obligations in this regard. Furthermore, the work of these committees is a fulltime job which will require the judicial officers to spend time on these committees which in turn take them away from their judicial work that is also not practical nor expedient.

6. We are informed that the relevant law on the subject is the Act, which establishes a National Disaster Management Commission (Commission) for the purposes of policy making. This Commission not only lays down the policy on disaster management but also approves a National Plan and Guidelines to be followed by the Federal and Provincial authorities in the event of a natural disaster. The Act also establishes a National Disaster Management Authority (NDMA) which is responsible for implementing, co-ordinating and monitoring the National Plan and Policy. As per section 13 of the Act, a Provincial Disaster Management Commission (PDMC) is established in each of the provinces, which lays down the Provincial Disaster Management Policy and also establishes the PDMA for the implementation, co-ordination and monitoring of the national as well as provincial plan in the event of a natural disaster. Section 18 of the Act constitutes the DDMA which works at the district level and is responsible for the preparation of Disaster Management Plan for the district, as well as implementing, coordinating and monitoring the National, Provincial and District plans at the district level. As per the powers and functions of the DDMA, they are required to provide relief to the community in response to any disaster, which includes shelter, food, drinking water and essential provisions, healthcare and services. They are also required to establish emergency communication systems and carry out relief efforts along with rescue operations in the area. Subsequent to the creation of the NDMA, a National Disaster Risk Reduction Policy was passed in

2013, which seeks to reduce vulnerabilities and increase resilience in the event of a natural disaster. It also provides guidelines for timely intervention and for reducing disaster risk. Additionally, a Disaster Management Strategy (2015 to 2022) was framed and a National Policy Guideline on Vulnerable Groups in Disasters 2014 (Policy Guidelines) was framed which stresses on the importance of dealing with vulnerable members of the community in the face of a natural disaster.

7. Despite the legal framework formed under the Act, the real issue is the lack of coordination and information with respect to the relief efforts being made by the Petitioners. It was argued before us that there are many parts of the Province of Sindh where relief efforts have not reached and where there is no food or drinkable water, nor any health care. Some of the causes of concern voiced by the Respondents was that roads, drainage, irrigation systems and sanitation systems are damaged or destroyed by the heavy rains and flooding. The supply of provisions and drinkable water is not enough; families have been evacuated but face diseases in the tent cities such as dengue, malaria and gastroenteritis. The Petitioners have admitted that there is difficulty not only on account of accessibility but also on account of resources including human resources to deal with the unprecedented floods. In this background, we find that the formation of the citizens committees by the High Court, in principle, was to facilitate relief efforts in different areas within the Province of Sindh, however, the inclusion of the members of the District Judiciary was not required given that there is an entire legal framework under the Act to ensure relief work right down to the district level. As per the scheme of the Act, members of the civil community which include volunteers, NGOs, doctors and others can be made part of the Provincial and District Management Authorities to help relief efforts. The record shows that they have been included in the DDMA vide notification dated 24.06.2014, however, there is no information on whether they actually participated. Section 3(2)(p) of the Act provides that National Commission shall also consist of representatives of civil society or any person appointed by the Prime Minister. As this is the policy making body, the inclusion of members of civil society on this Commission is imperative because for effective and efficient disaster management the inclusion of people likely to be affected is necessary not only for coordination, data collection and creating awareness but also to combine the efforts of the community and the authority in the event of a natural disaster. This gives civil society an opportunity to become part of the implementation, co-ordination and monitoring plan which only makes the work of the authority more effective. The Act also provides under Section 8 that the NDMA shall consist of members as may be prescribed by its chairperson. This Authority is headed by the Prime Minister, who can include any member as he deems appropriate. Similarly, at the provincial as well as the district level, the Act provides in its sections 13 and 15 that members to the PDMA and DDMA may be nominated by the Chief Minister and by the District Authority to include any member as they deem

appropriate. Under these provisions, members of civil society can be included not only on the Commission but also in the Authorities to ensure that relief work is carried out where required and to help in mitigating the effects of the natural disaster as well as work on rehabilitation of the affectees. Hence, inclusion of civil society is necessary.

8. These are unprecedented times, as per the United Nations Office for the Coordination of Humanitarian Affairs, more than 33 million people have been affected by the floods of which 14.5 million are in Sindh alone (ECHO Daily Flash of 25 October 2022 - Pakistan). Furthermore, despite the fact that the Act has provided its framework since 2010, the efficiency and effectiveness of the PDMA and DDMA is questioned by affectees. There is merit in this argument as there appears to be no monitoring system in place. In this context, participation by the public in the PDMA and DDMA and even at the Commission level ensures that the affectees are able to bring first hand their vulnerabilities and priorities, which results in a more measured response and proper allocation of resources where required. It also gives the Authority greater insight into the affected communities enabling them to work more effectively and produce better result. Community participation is not only necessary for planning disaster management but also for implementing and monitoring purposes as it gives people the right to participate in the decisions that affect their lives. This creates more awareness and a sense of ownership and responsibility which is required, particularly in disaster management so to enhance effectiveness and engage the people with their communities to provide rescue, relief and rehabilitation efforts. Hence, citizens' participation in the PDMA and DDMA can improve coordination and response which will enable the government authorities to provide relief work in a more effective and efficient manner. Moving forward, it is fundamental to the composition of the Commission, the NDMA, the PDMA and the DDMA that members of civil society are included in it.

9. At present to deal with the issue in hand, the citizens committees can work with DDMA to the extent of monitoring, coordination efforts and ensure that relief work reaches the affectees, who do not have sufficient assistance at the moment. The committees can also facilitate the PDMA and the DDMA of Sindh in providing necessary information and data with reference to relief work and what is required which will improve the Authorities' coordination with affected areas and communication with affected areas especially due to the challenges of accessibility and communication failure. The citizens committee can, therefore, monitor the efforts of the PDMA and the DDMA which will not only lead to better results in the relief work but will also create awareness within the affectees as to the manner in which the relief effort is being carried out will encourage them to participate. This participatory approach to a natural disaster humanizes the work of the authorities so that affectees are provided with real time relief that they need and not what the paperwork suggests.

10. In this regard, we also note that the impugned orders have directed that the citizens committees should comprise of medical superintendents of the Taluka Hospital, Mukhtiarkar, focal person of PDMA and the President of the Taluka Bar Association. In this context, we find that the Policy Guidelines requires the participation of women in disaster management plan at all levels to ensure integration of the gender perspective. As per the Policy Guidelines, women are at a greater risk from natural disasters than men. They are vulnerable and victims in natural disasters but also play a significant role throughout the disaster management cycle, without being adequately recognized and included in the decision making. The Policy Guidelines also emphasizes on ensuring equal access to relief opportunities for victims without any discrimination which requires the needs of vulnerable groups to be targeted to ensure that their needs are attended, safeguarded and protected. As per the Policy Guidelines, women, children, older persons, persons with disabilities are all defined as vulnerable groups in disaster. The NDMA and National Disaster Risk Reduction Policy all emphasize on reducing risks and vulnerabilities of those who are marginalized which include women, children, older person, persons with disabilities and minorities, however, there is no report available on the actual efforts made during the last six months. A National Gender and Child cell framework was also formulated in 2013 to work towards the disaster preparedness and disaster risk reduction for which again there is no information on its working in the 2022 floods. Therefore, in line with the policies formulated, it is imperative that the citizens committees include women, older persons and persons with disabilities so that the required response is ensured and provided and that the Policy Guidelines formulated be implemented real time. In this context, we note that the affected areas require maternity and healthcare for women so there is an increased need for female doctors, trainers and caretakers to attend to the health concerns. Women are often subjected to gender-based violence and harassment in times of such calamities, therefore safety and security concerns are also of significance for which appropriate response is also required. In this context, although the framework exists, an effort must go into ensuring that it actually functions and fulfils its mandate. Accordingly, we find that the citizens committee should ensure the representation of the vulnerable groups, particularly of women, in order to strengthen its perspective.

11. In view of the aforesaid, the impugned orders are modified to the extent that the citizens committee shall no more be headed by a Civil Judge notified by the District Judge concerned and the citizens committee shall no more work under the supervision of the concerned District and Sessions Judge. However, the citizens committees shall continue to operate with the given composition including that of vulnerable groups, particularly women for monitoring the relief work and provide necessary information to the DDMA to improve their efforts. Furthermore, the direction given in the impugned orders that the citizens committee shall look after the

affairs of tent cities is modified in the manner that the citizens committees shall oversee the work of the government authorities and provide necessary information and data to facilitate the work of the authorities. In this regard, we clarify that the citizens committee itself shall not engage in directing or controlling the relief work being undertaken but shall participate in the process put in place by DDMA to make it more effective and inclusive. The requirement of filing reports before the High Court by the PDMA and DDMA with respect to the work and progress of the relief work shall be filed bi-weekly to ensure efficiency. Further, the requirement of filing reports before this Court with respect to the composition of the citizens committee shall be filed within three weeks to ensure necessary compliance.

12. The petitions are disposed of in the above terms.

I have read the additional note by my brother Justice Syed Mansoor Ali Shah and agree also with the environmental aspects of the case dealt with therein.

Sd/-

Umar Ata Bandial, C.J.,

Sd/-

Syed Mansoor Ali Shah, J

I agree with the additional note as well.

Sd/-

Ayesha A. Malik, J

SYED MANSOOR ALI SHAH, J.---I have read the judgment authored by my learned colleague, Mrs. Justice Ayesha A. Malik and I am in complete agreement with the same. However, I would be remiss if the dimension of climate change is not highlighted in the backdrop of the recent floods. Climate change is undoubtedly the most serious existential threat faced by Pakistan and the major cause of the recent floods. Therefore, any post-floods strategy must first and foremost propose a national strategy to deal with climate change today and tomorrow. The primary responsibility falls on the shoulders of the Ministry of Climate Change, Government of Pakistan, as well as, the National Disaster Management Authority (NDMA) to propose a national adaptation plan to avert the horrific devastation caused by floods this year and also to safeguard and protect the fundamental rights of the people from the wrath of climate change. I, therefore, feel compelled to append this additional note in public and national interest.

2. Pakistan was ranked in the top 10 most vulnerable countries on the "Global Climate Risk Index 2021"[1] and the devastation caused by the recent floods in 2022 is distressing proof of the same.

Research has found that the 5-day maximum rainfall over Sindh and Balochistan (Provinces of Pakistan) had become 75% more intense than it would have been had the climate not warmed by 1.2 C, thereby directly connecting global warming to be a major cause of the recent floods of 2022 and the likelihood of its recurrence in the years to come[2]. The probability of such heatwaves has now substantially increased due to climate change, with future heatwaves being even more hotter compared to 2022[3], therefore, chances of similar extreme rainfall have also become more likely. According to the "Pakistan Floods 2022 Post-Disaster Needs Assessment" prepared by the Ministry of Planning Development and Special Initiatives, Government of Pakistan with the assistance of other international bodies such as the World Bank etc., the total damage from the floods is evaluated to be at PKR 3.2 trillion (US$14.9 billion), total loss at PKR 3.3 trillion (US$15.2 billion), and total needs for recovery and reconstruction at PKR 3.5 trillion (US$16.3 billion)[4]. The resulting food and health insecurity, the risk of food shortage and diseases pose challenges that need serious and urgent attention[5]. In view of this unprecedented damage and the likelihood of its recurrence, it is imperative that serious and practical efforts are undertaken for prevention and adaptation against such disasters induced by climate change. It is also expected that existing policies or mechanisms catering to food insecurity etc. are mobilized as soon as possible and if no such policies or mechanisms exist, then the respective State functionaries should take urgent action to formulate such policies and create such mechanisms to prevent further exacerbation of the losses and damage already suffered due to the floods and for sustainable rehabilitation.

3. The existing climate change framework of Pakistan indicates that the Ministry of Climate Change, Government of Pakistan has formulated a National Climate Change Policy, updated in 2021, devising policy measures for climate change adaptation and mitigation. Furthermore, the Climate Change Act of 2017 ("Climate Change Act") has established the Pakistan Climate Change Council and the Pakistan Climate Change Authority. The latter has been empowered to formulate adaptation and mitigation policies, plans etc., including the National Adaptation Plan, which the former shall approve and monitor. However, it seems that no substantial policies or plans have been formulated or implemented under the Climate Change Act. It is apparent that the measures in place are insufficient to cater to rapidly changing climate and its dire effects, therefore, there is a need for a coordinated joint effort in this regard. The National Disaster Management Act, 2010 ("Act") itself does not expressly cater to climate change, nonetheless, the Act does provide for taking measures for prevention of disasters and mitigation. Section 6(2)(g) of the Act provides that the National Disaster Management Commission ("Commission") may 'take such other measures for the prevention of disaster or the mitigation or for preparedness as it may consider necessary'. Prevention and mitigation have also been provided under provisions stipulating

powers and functions of the Provincial Disaster Management Commission, the Provincial Disaster Management Authority and the District Disaster Management Authority established under the Act. Similarly, section 10(3)(a) stipulates that the National Plan shall include 'measures to be taken for the prevention of disasters or the mitigation of their effects' and section 17(3)(b) of the Act stipulates that the Provincial Plan shall include "the measures to be adopted for prevention and mitigation of disasters". Although the National Disaster Management Plan, 2012 does refer to the increase in climate-related natural disasters, however, it falls short of devising any meaningful steps/directions to suggest adaptation measures to address and guard against the changing climate. Similarly, one of the policy objectives of the National Disaster Risk Reduction Policy, 2013 includes promoting development planning that considers and addresses risks alongside environmental and climate change concerns but there appears to be no plan or strategy on the ground that has been formulated and put out in the public domain that deals with adaptation measures to be taken by the Government or the respective authorities in order to ensure that the floods of 2022 are not repeated next year. The rehabilitation work has to be climate resilient and it must be a part of a master adaptation plan. The Pakistan Climate Crises Charter 2022 ("Charter") published by the WWF provides a roadmap with the following actions:

i. Advocate for loss and damage financing internationally

ii. Address institutional governance issues

iii. Develop an effective local government system

iv. Map climate risks and vulnerabilities

v. Prioritize and mainstream local level adaptation

vi. Incorporate nature-based solutions in the development paradigm

vii. Address vulnerabilities in disadvantaged communities

viii. Mainstream crisis response across local communities

ix. Address population management concerns

The said Charter has been prepared in consultation with some of the following:-

a) National Disaster Risk Management Fund

b) Ministry of Planning, Development and Special Initiatives

c) Ministry of Climate Change

d) Pakistan Council for Research in Water Resources

e) Centre for Disaster Management, University of Management and Technology, Lahore

f) Population Council

g) International Union for Conservation of Nature (Pakistan)

h) World Wide Fund for Nature Pakistan

i) Sustainable Development Policy Institute

j) International Water Management Institute

k) Global Water Partnership

l) Pakistan Academy of Sciences

m) Sustainable Development Policy Institute

n) Global Change Impact Studies Centre

Yet there is no policy or directive from the concerned Ministry supporting the said Charter or moving in this direction.

4. Climate justice was an important consideration at the recent 27th Conference of the Parties to the United Nations Framework Convention on Climate Change ("COP27") which concluded with a significant and positive development through the formation of a loss and damage fund for climate-vulnerable developing countries[6]. Soon funds will be allocated to countries that have suffered loss and damage due to climate change. It is high time to develop a mechanism for the allocation of these funds and the identification of key adaptation infrastructural projects that will help build national climate resilience, especially against floods in the years to come. It is expected that the Ministry of Climate Change, Government of Pakistan shall drive this initiative and frame a policy and set up a mechanism to effectively and efficiently utilize such funds. Additionally, under section 11 of the Act, subject to the directions of the Commission, the National Disaster Management Authority ("NDMA") is to lay down guidelines for minimum standards of relief to be provided to persons affected by disaster. The NDMA has formulated guidelines under this provision, such as the NDMA Guidelines for Minimum Ex-Gratia Assistance to the Persons Affected by Natural and Man-Made Disasters, 2016, and State functionaries, while operating under the said guidelines, are expected to promptly formulate a mechanism for provisioning of immediate relief to persons affected by climate-related disasters. It is therefore essential that these global funds are invested in building national climate resilience so that climate induced disasters can be minimized. Climate Change is a perhaps the most serious threat to the fundamental rights of the people in Pakistan. In order to protect their right to life and above all their right to dignity under Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973, a climate resilient adaptation plan including a detailed mechanism for

utilization of financial support coming to Pakistan from the loss and damage fund, is the need of the hour. Having failed to learn from the floods in 2010, as has become apparent from the magnitude of the destruction caused by the recent floods, it is pivotal that effective steps are taken to prevent such catastrophes in the future. I hope the Federal Government will act with speed in this regard because in the words of Greta Thunberg,[7] "our house is on fire."

5. This additional note be placed before the other members of the bench for their perusal.

Sd/-

Syed Mansoor Ali Shah, J

MWA/P-1/SC Order accordingly.

Case:13 - Waseef Ullah And Others---Respondents

2023 S C M R 503

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, C.J., Amin-ud-Din Khan and Muhammad Ali Mazhar, JJ

COLLECTOR OF CUSTOMS, MODEL CUSTOMS COLLECTORATE, PESHAWAR---Petitioner

Versus

WASEEF ULLAH and others---Respondents

Civil Petitions Nos. 389, 696 to 742 of 2022, decided on 6th July, 2022.

(Against the judgment dated 01.12.2021 passed by the Peshawar High Court, Peshawar, in Custom References Nos.270-P to 317-P of 2020)

Date of hearing: 6th July, 2022.

ORDER

MUHAMMAD ALI MAZHAR, J.---The aforesaid forty-eight Civil Petitions for leave to appeal are directed against the common judgment dated 01.12.2021 passed by the learned Peshawar High Court in Custom References Nos. 270-P to 317-P/2020, whereby the Reference Applications were answered in the negative in favour of the respondents, and against the petitioner.

2. The tersely enunciated facts of these civil petitions are as under:-

The Federal Government, vide S.R.O. 499(I)/2013 dated 12-6-2013, exempted customs duty, sales tax and with-holding tax on import of Hybrid Electric Vehicles (HEVs) falling under PCT Code 87.03. During the audit, the Deputy Collector Customs (Import) Dry Port, Model Customs Collectorate, Peshawar observed that used Hybrid Suzuki, Hustler, Wagon-R, Mazda, Cross-over, Suzuki IGNIS were cleared illegally on 50% exemption of duty and taxes in terms of SRO 499(I)/2013 dated 12-6-2013. Show cause notices were issued to the importers and Customs Clearing Agents under section 32 (3A) of Customs Act 1969 read with section 3(1) of Imports and Exports (Control) Act, 1950, section 3(1)(b) of Sales Tax Act, 1990, sections 148 and 182 of the Income Tax Ordinance, 2001 and section 33(5) of Sales Tax Act, 1990 and after submission of replies, the Deputy Collector Customs (Adjudication) through Order-in-Original upheld the show cause notice. The respondents preferred appeals to the Collector of Customs (Appeals) but all appeals were dismissed,

thereafter, the respondents approached the Customs Appellate Tribunal and the appeals were allowed, thereafter, the petitioner filed Customs Reference against the Customs Appellate Tribunal judgment but all Reference applications were dismissed.

3. The learned counsel for the petitioners argued that the learned High Court has wrongly held that the Notification S.R.O. 499(I)/2013 dated 12.06.2013 ("S.R.O.") is applicable to both new and used imported Hybrid Electric Vehicles ("HEV(s)"), which is contrary to the Import Policy Order, 2016 in which import of old and used HEVs are not allowed. It was further contended that during the audit it was revealed that the duty, taxes and other charges have been short levied, therefore the importer could be served with a show cause notice within five years, under section 32(3A) of the Customs Act 1969 ("Customs Act"), for recovery of the deficit amount of levy, and the adjudicating authority had rightly issued notice to the importers that they have availed the exemption wrongly, but both the learned Tribunal and learned High Court have decided the issue without proper application of mind.

4. Heard the arguments. The sticking point and bone of contention between the parties is embryonic vis- -vis the interpretation of the S.R.O. and the subsequent circular dated 05.10.2018 issued by the Assistant Collector of Customs, MCC Appraisement-West, Custom House, Karachi ("Circular"). For the ease of convenience, both are reproduced as under:

"GOVERNMENT OF PAKISTAN MINISTRY OF FINANCE, ECONOMIC AFFAIRS, STATISTICS AND REVENUE (REVENUE DIVISION)

Islamabad, the 12th June, 2013

NOTIFICATION

(Customs, Sales Tax and Income Tax)

S.R.O. 499(I)/2013.---In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), clause (a) of subsection (2) of section 13 of the Sales Tax Act, 1990 and sections 53 and 148 of the Income Tax Ordinance, 2001 (XLIX of 2001), and in supersession of Notification No. S.R.O. 607(I)/2012, dated the 2nd June, 2012, the Federal Government is pleased to exempt customs duty, sales tax and withholding tax on Import of Hybrid Electric Vehicles (HEVs) falling under PCT Code 87.03, specified in column (2) of the Table below, to the extent as specified in column (3) thereof, namely:-

S.No.	Engine Capacity	Extent of exemption in leviable duty and taxes
(1)	(2)	(3)
1	Upto 1800 cc	50%
2	From 1800 cc to 2500	25%

cc

2. This notification shall take effect from the 13th day of June, 2013.

(Mohammad Riaz)

Additional Secretary"

"GOVERNMENT OF PAKISTAN MODEL CUSTOMS COLLECTORATE OF APPRAISEMENT WEST CUSTOM HOUSE, KARACHI

No.SI/MISC/102/218-VI dated 05.10.2018

CIRCULAR

It is for information of all concerned that the benefit of exemption from custom duties, sales tax and Income tax on import of Hybrid Electric Vehicles (HEVs) under S.R.O.499(I)/2013 dated 12.06.2013 is only available and extended to Fully Hybrid Vehicles. Only those vehicles are termed as Full Hybrid, which have larger batteries and motor to drive the vehicle on EV (Electric Vehicle) made for certain period of time. The concession under aforesaid S.R.O. is not being extended to any other vehicle claimed to be HEV like Mild/Micro Hybrid vehicles.

(Raissa Kanwal)

Assistant Collector of Customs

MCC Appraisement-West

Group-VII"

5. The S.R.O. dated 12.6.2013 was issued by the Government of Pakistan in exercise of powers conferred by section 19 of the Customs Act, clause (a) of subsection (2) of section 13 of the Sales Tax Act, 1990 ("Sales Tax Act"), and sections 53 and 148 of the Income Tax Ordinance, 2001 ("ITO 2001"). The nitty-gritties of Section 19 of the Customs Act make it unequivocally clear that it communicates the general power of granting exemptions from customs duties whenever circumstances exist to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations, protection of national economic interest in the situation arising out of abnormal fluctuation in international commodity prices, implementation of bilateral and multilateral agreements, etc. In the aforesaid eventualities, the Government of Pakistan may by notification exempt any goods imported into or exported from Pakistan from the whole or any part of the customs duties chargeable thereon and may remit fine, penalty, charge or any other amount recoverable under the Customs Act. A similar provision is incorporated under subsection (2) of section 13 of the Sales Tax Act, in which also the Federal Government may exempt any supplies made or import of any goods from the whole or any part of the tax chargeable under

this Act. In tandem, section 53 of the ITO 2001 is also germane to the exemption and tax concessions in the Second Schedule, and section 148 of the ITO 2001 is related to advance tax paid to a collection agent. Within the precincts of powers, the Federal Government had issued the S.R.O. to exempt customs duty, sales tax and withholding tax on the import of HEVs falling under PCT Code 87.03, and the S.R.O. was made effective from 13.06.2013. During the existence of this S.R.O., the Assistant Collector of Customs MCC Appraisement-West issued the Circular dated 5.10.2018 wherein an unjustifiable condition was sought to be imposed, beyond the purview of the original S.R.O., that the benefit of exemption of duties and taxes on the import of HEVs under the S.R.O. is only available to Fully Hybrid Vehicles which have larger batteries and a motor to drive the electric vehicle.

6. The Deputy Collector, Collectorate of Customs (Adjudication), Islamabad, issued show cause notices in the year 2019 which were obviously issued after the dissemination of the Circular. The primary thrust of the show cause notice was that the aforesaid S.R.O. was applicable only to Fully Hybrid Vehicles which have larger batteries and enough power to drive the vehicles, and its benefit was not applicable to the hybrid vehicles which do not have larger batteries. The Deputy Collector, in the Order-in-Original, directed the recovery of taxes and duties along with the imposition of penalty on the importer and a separate penalty on the clearing agent. This order was challenged before the Collector of Customs Appeals, who affirmed the Order-in-Original and also held that the Circular dated 5.10.2018 was not in conflict with the statutory order, but was clarificatory in nature and finally, the appeal was also dismissed. The appellate order was assailed by the importers before the Customs Appellate Tribunal and, vide order dated 27.8.2022, the appeals were allowed and the order passed in the appeals by the Collector, as well as the Orders-in-Original were set aside.

7. The learned High Court framed the following questions of law in the aforesaid Customs References:-

i. Whether as per facts and in the circumstances of the case, the Federal Government through Notification SRO.499(I)/2013 dated 12.06.2013 has exempted customs duty, sales tax and withholding tax on import of new Hybrid Electric Vehicles (HEVs) to the extent specified in column (3) of the Notification?.

ii. Whether as per facts and in the circumstances of the case, "The Tribunal" has wrongly held that old imported Hybrid Electric Vehicles (HEVs) imported by respondent No.1 is entitled for the exemption notified under Notification SRO.499(I)/2013 dated 12.06.2013?

iii. Whether as per facts and in the circumstances of the case, the old and used vehicle imported by respondent No.1 has wrongly been extended the benefit of SRO.499(I)/2013 dated 12.06.2013 by "The Tribunal committing gross illegality?

iv. Whether as per facts and in the circumstances of the case, where it is discovered as a result of an audit or examination of importer's documents, that any duty, taxes or charge has been short levied, the importer can be served within five years with notice under section 32(3A) of "The Act" requiring him to pay the amount specified in the notice?

v. Whether as per facts and in the circumstances of the case, the adjudicating authority has correctly issued notice to the importer and customs clearing agent under section 32(3A) of "The Act" 1969 read with section 3(1) of the Imports and Exports (Control) Act, 1950, section 31 (b) of the Sales Tax, 1990, section 148 of Income Tax Ordinance, 2001 having wrongly availed exemption of S.R.O. 499(I)/2013?

8. After considering the pros and cons, the learned High Court answered all the questions in negative in favour of the respondents, and against the petitioner. The learned counsel for the petitioner, though accepting the validity of the S.R.O., endeavored to argue by presenting an altogether new plea that the above S.R.O. was applicable only to new HEVs which was never the subject matter in the lower fora, including the learned High Court. Neither was any plea taken with regard to the Import Policy Order 2016 in the forum below, nor was any such thing alleged in the show cause notice, nor were the original proceedings triggered on this count. Even otherwise, the Import Policy of 2016 cannot be given retrospective effect to take away or withdraw the relief of exemption extended in the S.R.O. As a matter of fact, the show cause notice was issued under the garb of the Circular, wherein the Assistant Collector of Customs innovated a new criteria that the benefit in the original S.R.O. was only extended to the Fully Hybrid Vehicles which have larger batteries and a motor to drive the vehicles, but nothing is mentioned in this regard in the S.R.O. itself. At the outset, nothing was placed on record as to how the Assistant Collector of Customs, MCC Appraisement, West Group-VII had any lawful authority to issue such Circular in order to make an amendment in the original S.R.O. whereby he added certain strange conditions under the guise of a so-called clarification which changed the complexion and substratum of the S.R.O. without any lawful authority. Both the learned Appellate Tribunal and learned High Court have rightly discarded this Circular which was unjustifiably and irrationally approved in the Appellate Order while describing the Circular as clarificatory in nature. In fact, the Federal government exempted duties on the import of HEVs falling under PCT Code 87.03 without any distinction of new or used hybrid vehicles, or large or small batteries, or with any specific qualification sine qua non for exemption, so the plea articulated by the learned counsel for the petitioner is misconceived and beyond the pleadings which was never set up before any forum below. According to the literature of the U.S. Department of Energy, accessible through their website, the technical details of HEVs are as under:

Hybrid Electric Vehicles (HEVs) are powered by an internal combustion engine in combination with one or more electric motors that use energy stored in batteries. HEVs combine the benefits of high fuel economy and low tailpipe emissions with the power and range of conventional vehicles. Although HEVs are often more expensive than similar conventional vehicles, some cost may be recovered through fuel savings or state incentives. In HEVs, the extra power provided by the electric motor may allow for a smaller combustion engine. The battery can also power auxiliary loads and reduce engine idling when the vehicle is stopped. Together, these features result in better fuel economy without sacrificing performance. HEVs cannot plug into off-board sources of electricity to charge the battery. Instead, the vehicle uses regenerative braking and the internal combustion engine to charge. The vehicle captures energy normally lost during braking by using the electric motor as a generator and storing the captured energy in the battery.

[Ref: https://afdc.energy.gov/vehicles/electric basics hev.html]

9. The abbreviation "S.R.O." stands for "Statutory Regulatory Orders" which in fact refers to genres of government regulations disseminated through delegated powers under the statutory regime. Insofar as it relates to taxing statutes, the concessions or exemptions may be granted through statutory regulatory orders; it may also impose tax in the form of additional duties and regulatory duties including exemptions and may lay down the procedural niceties to implement the laws and amendments in an existing S.R.O. It is clear that the S.R.O. only classifies HEVs with PCT headings without drawing any distinction with regard to fully or semi hybrid, or used or new vehicles, or any specification of large batteries. Anything which tried to be inferred extraneously or beyond the scope or tenor of the S.R.O. was not permissible under any rule of interpretation. According to well-settled canons and rules of interpretation laid down by the superior Courts time and again, the indispensable and imperative sense of the duty of the Court in interpreting a law is to find out and discover the intention of the legislature, and then endeavor to interpret the statute in order to promote or advance the object and purpose of the enactment. The S.R.O. requires purposive interpretation or construction which complements its effect to the purpose by following conscientious and exact meaning. S.R.Os are issued fundamentally in the aid of substantive principles of law set out in the parent legislation, and to give effect to administrative directions and instructions for the implementation of the law. If the words used are capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. If the words of the section are plain and unambiguous, then there is no question of interpretation or construction. The duty of the Court then is to implement those provisions with no hesitation. When the material words are capable of two constructions, one of which is likely to defeat or impair the

policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. The Court cannot supply casus omissus and while interpreting a statute, the Court cannot fill in gaps or rectify defects and cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The legal maxim, "absoluta sententia expositore non indigent" also reminds us that, when the language is not only plain, but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation. Whereas another maxim "generalia verba sunt generalita intelligenda" expresses that general words are to be understood generally and what is generally spoken shall be generally understood unless it be qualified by some special subsequent words or unless there is in the statute itself some ground for restricting their meaning by reasonable construction, not by arbitrary addition or retrenchment [Ref: N. S. Bindra's interpretation of Statutes (Tenth Edition), (Page No.609-610) and (Page No.656-657)].

10. It is well established law that the burden rests on the person who claims an exemption or concession to substantiate that he is entitled to the same. In a taxing statute, there is no leeway or probability of any intendment but the manner of interpretation should be such which undoubtedly or unmistakably comes into sight from the plain language of the notification with the conditions laid down in it, but with the caution that the benefits arising from a particular exemption should not be defeated or negated and, in case of any ambiguity or mischief, the taxing statute should be construed in favour of the assessee. By and large, the exemption notification is interpreted rigidly, but when it is found that the assessee has satisfied the exemption conditions, a liberal construction should be made. The doctrine of substantial compliance, though on one hand premeditated to avoid hardship, simultaneously safeguards the essential compliance of the prerequisites in which the exemption in tax or customs duty are invoked. Here we would like to refer to the relevant excerpts from N. S. Bindra's interpretation of Statutes (Tenth Edition), page 1118, with regard to strict construction of taxing statues, as well as the exemptions accorded therein, as under:

"CHAPTER 23: FISCAL STATUTES

12. STRICT CONSTRUCTION

Taxing Acts must be construed strictly. One must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed. If there are two views possible, the one favorable to the assessee in matters of taxation has to be preferred. The assessee should be given the benefit of doubt and the opinion which is in its favour should be given effect to. In interpreting a fiscal statute the court cannot proceed to make good deficiencies if

any; the court must interpret the statute as it stands and in the case of a doubt, in a manner favorable to the tax-payer.

14. EXEMPTIONS FROM TAXATION

It is true that when in a fiscal provision if benefit of exemption is to be considered this should be strictly considered. However, the strictness of the construction of exemption notification does not mean that the full effect to the exemption notification should not be given by any circuitous process of interpretation. After all, exemption notifications are meant to be implemented. They have to be interpreted strictly and in its entirety and not in parts. Where an exemption is conferred by a statute by an exemption clause, that clause has to be interpreted liberally and in favour of the assessee but must always be without any violence to the language used. The rule must be construed together with the exemption provision, which must be regarded as paramount. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. The apex court has held that excise department could not deny the benefit of an exemption notification to the respondents on the reasoning that to get the benefit, the ingots must be manufactured from ore 100% made in the factory of the assessee, when the exemption notification contained no indication to such effect. A provision intended for the benefit of the taxpayer must be construed liberally in favour of the tax-payer.

Claims of exemption must fall within the four corners of the exemption provision. One of the settled principles of construction of the an exemption notification is that it should be construed strictly but once a good is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by resorting to applying or construing such notification narrowly and once the good is to fall even narrowly in any of these categories there appears no justification to exclude it".

11. The survey of the judgment rendered by this Court in the case of Jamat-i-Islami Pakistan v. Federation of Pakistan (PLD 2000 Supreme Court 111), demonstrates that the statutes must be intelligibly expressed and reasonably definite and certain and it is the duty of the Court to find out the true meaning of a statute while interpreting the same. While in the case of Government of Pakistan and others v. Messrs Hashwani Hotel Ltd. (PLD 1990 Supreme Court 68), it was held that the plain ordinary meaning of the word is to be adopted in construing a document. This judgment also refers to the case of Pakistan Textile Mill Owners Association Karachi v. Administrator of Karachi (PLD 1963 Supreme Court 137), wherein it was observed that in a taxing statute, as in any other statute, there is no reason to depart from the general rule that words used in a statute must first be given their ordinary and natural meaning. Whereas in the case of Pakistan through Chairman FBR and others v. Hazrat Hussain and others (2018 SCMR 939), this Court held that the power of granting exemptions is discretionary, it is equally true

that the said power cannot be exercised in a discriminatory manner. Exemptions are to be granted and regulated in terms of consistent policies for sound reasons. In the case of Mathuram Agrawal v. State of Madhya Pradesh (AIR 2000 SC 109), the Court held that the intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute.

12. In the present state of affairs, exemption of customs duty, sales tax and withholding tax on Import of Hybrid Electric Vehicles (HEVs) falling under PCT Code 87.03, specified in column (2) of the Table to the extent as specified in column (3) in terms of S.R.O.499 (I)/2013, dated 12.6.2013 could neither be denied nor circumvented on the basis of subsequent circular dated 5.10.2018, issued by the Assistant Collector of Customs. It is well settled exposition of law that if the tax-payer is entitled for exemption in plain terms of notification, then the department could not deny the benefit of an exemption which was intended for the benefit of the taxpayer so it should be construed accordingly.

13. At this juncture, we cannot lose sight of the raison d' tre of promulgating the Pakistan Climate Change Act, 2017 which envisions compliance with international conventions relating to climate change and adoption of comprehensive mitigation policies, plans, programmes, projects and other measures required to address the effects of climate change. In the definition clause, "climate change" means a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a direct or indirect consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period; whereas "emissions", in relation to greenhouse gas, means emissions of that gas into the atmosphere caused by human activity; while "greenhouse gas" means any gas that contributes to the greenhouse effect by absorbing infrared radiation produced by solar warming of the earth's surface and includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, nitrogen trifluoride and any other direct or indirect greenhouse gas as recognized by UNFCCC and IPCC from time to time. The function of the Council includes the obligation to co-ordinate, supervise and guide the mainstreaming of climate change concerns into decision-making by Federal and Provincial Governments to create enabling conditions for integrated climate-compatible and climate-resilient development processes in various sectors of the economy; approve and monitor implementation of comprehensive adaptation and mitigation policies, strategies, plans, programmes, projects and other measures, whereas the Functions of the Authority encompasses the formulation of comprehensive adaptation and mitigation policies, plans, programmes, projects and measures designed to address the effects of climate change and meet

Pakistan's obligations under international conventions and agreements relating to climate change and within the framework of a national climate change policy as may be approved by the Federal Government from time to time; establish institutional and policy mechanisms for implementation of Federal and provincial adaptation and mitigation policies, plans, programmes, projects and measures, including plans for renewable energy and clean technology measures for energy efficiency and energy conservation and awareness-raising and capacity-building programmes; carry out a Technology Needs Assessment and prepare a Climate Change Technology Action Plan in accordance with international best practices for seeking technical and financial support etc. The Schedule appended with reference to Sections 2, 4, 17 and 18 to the aforesaid Act integrates the United Nations Framework Convention on Climate Change (UNFCCC), Rio De Janeiro, 1992; Kyoto Protocol to the UNFCCC, 1997; The Paris Agreement, 2015; including any other agreement relating to climate change to which Pakistan is a signatory.

14. In unison, the Pakistan Environmental Protection Act (PEPA), 1997 also ropes in various provisions for protection, conservation, rehabilitation and improvement of the environment, and for control of pollution, promotion of sustainable development, conservation, rehabilitation, improvement of the environment, prevention and control of pollution, promotion of sustainable developments which has close proximity and nexus to the Pakistan Climate Change Act, 2017. In this Act too, "pollution" means the contamination of air, land or water by the discharge or emission or effluents or wastes or air pollutants or noise or other matter which either directly or indirectly or in combination with other discharges or substances alters unfavourably the chemical, physical, biological, radiational, thermal or radiological or aesthetic properties of the air, land or water or which may, or is likely to make the air, land or water unclean, noxious or impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to biodiversity. Section 12 of this Act is directly related to the regulation of Motor Vehicles which provides that no person shall operate a motor vehicle from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the National Environmental Quality Standards or, where applicable, the standards established under clause (g) of subsection (1) of section 6 and for ensuring compliance with the standards mentioned in subsection (1), the Federal Agency may direct that any motor vehicle or class of vehicles shall install such pollution control devices or other equipment or use such fuels or undergo such maintenance or testing as may be prescribed. Last but not least, under section 31, the Federal Government is vested with the powers to make rules including the rules for implementing the provisions of the international environmental agreements, specified in the Schedule to this Act which includes International Plant Protection Convention, Rome, 1951; Plant Protection Agreement for the South-East Asia and Pacific Region (as amended) Rome 1956; Agreement

for the Establishment of a Commission for Controlling the Desert Locust in the Eastern Region of its Distribution Area in South-West Asia (as amended), Rome, 1963; Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 1971 and its amending Protocol, Paris, 1982; Convention Concerning the Protection of World Cultural and Natural Heritage (World Heritage Convention), Paris, 1972; Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, 1973; Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979; Convention on the Law of the Sea, Montego Bay, 1982; Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985; Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987 and amendments thereto; Agreement on the Network of Aquaculture Centres in Asia and the Pacific, Bangkok, 1988; Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal, Basel, 1989; Convention on Biological Diversity, Rio De Janiero, 1992 and United Nations Framework Convention on Climate Change, Rio De Janiero, 1992.

15. In a nutshell the niceties of both the laws are intermingled and focused on the commitments and responsibility of the concerned Council and Authority constituted under the Acts to make sincere efforts to ensure the prevention and control of pollution, promotion of sustainable development, conservation, rehabilitation, improvement of the environment and address the effects of climate change in our country with a further obligation to implement different conventions and treatise. The mere legislation of laws without effective implementation and execution is useless and ineffectual. Instead, sincere efforts are required by the concerned authorities to safeguard the climate and reduce the adverse environmental impact of human activity. According to the U.S Department of Transportation Report, updated on 24.8.2015, motor vehicles are a leading source of air pollutants that affect human health. Vehicle emissions contribute to the formation of ground level ozone (smog), which can trigger health problems and increased susceptibility to respiratory illnesses. The aforesaid report further articulates that the levels of traffic related air pollution are higher near major roadways that have high traffic volume but the air quality may be improved through HEVs. Different research documents also suggest that toxic pollutants in the air or deposited on soils or surface waters can impact wildlife in a number of ways. Like humans, animals can experience health problems if they are exposed to sufficient concentrations of airborne toxins over time. It can also damage crops and trees in a variety of ways. Ground-level ozone can lead to reductions in agricultural crop and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease, pests and other environmental stresses.

16. The technology of HEVs is well accepted and internationally acclaimed technology in the modern world. Besides being fuel

efficient, it is also an alternative solution to cautiously concentrate on the issue of global warming. The proper and futuristic use of this technology will progress our country, and will not only improve and recuperate the atmosphere and ecosystem, but also alleviate destructive facets of climate change by lessening smoke emissions in order to effectively implement the Climate Change Act of 2016 and the Pakistan Environmental Protection Act (PEPA), 1997. Though the S.R.O. granting exemption on HEVs does not specifically encapsulate this particular purpose but, on the face of it, the exemption on the import of HEVs was logically issued for protection against climate change, and to minimize its adverse impact in the future which is a step forward towards the implementation and compliance of Pakistan Environmental Protection Act (PEPA), 1997. It is also the need of the time and a pressing priority to promote and encourage HEVs more and more, rather than applying irrational interpretations resulting in unwarranted restrictions on the exemption already in field.

17. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgment passed by the learned Peshawar High Court. Accordingly, these Civil Petitions are dismissed and leave is refused.

MWA/C-2/SC Petitions dismissed.

Case 14: Amer Ishaq

P L D 2024 Supreme Court 1134

Present: Syed Mansoor Ali Shah, Muhammad Ali Mazhar and Shahid Bilal Hassan, JJ

AMER ISHAQ and others---Petitioners

Versus

PROVINCE OF KHYBER PAKHTUNKHWA and others---Respondents

Constitution Petitions Nos. 4 and 14 of 2021

(Regarding declaration of Rule 2 (c) and Schedule-IV of the Khyber Pakhtunkhwa Power Crushers (Installation, Operation and Regulation) Rules, 2020 as ultra vires the Constitution).

and

Crl.M.Appeal No.8 of 2021 in Crl.O.P No.NIL of 2021.

and

C.M.A No.4707/2020 in C.A No.844/2020.

(Report of Hagler Bailly Pakistan)

Constitution Petitions Nos.4 and 14 of 2021, Crl. M. Appeal No.8 of 2021 in Crl. O.P No.NIL of 2021 and C.M.A No.4707 of 2020 in C.A No.844 of 2020, decided on 11th July, 2024.

Date of hearing: 11th July, 2024.

ORDER

SYED MANSOOR ALI SHAH, J.---The instant Constitution Petition No.4/2021 was filed under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), challenging the vires of Rule 2(c) and Schedule-IV of the Khyber Pakhtunkhwa Power Crushers (Installation, Operation and Regulations) Rules, 2020 ("Rules") to the extent they are ultra vires Sections 7 and 19 of the Khyber Pakhtunkhwa Power Crushers (Installation, Operation and Regulations) Act, 2020 ("Act") as well as the fundamental rights i.e., Articles 9, 23, 24, and 25 of the Constitution. During the course of hearing of this case in 2021, it was discovered that the core issue behind the challenge to the vires of the Rules is the air pollution in the area due to the unlawful operations of stone power crushers[1] in the village Suraj Galli, Tehsil Khanpur, District Haripur. Therefore, the environmental degradation through air pollution is at the heart of this case and forms the context for challenging the vires of the said Rules. It is for this reason that

vide Order dated 15.06.2021, the Report prepared by Hagler Baily Pakistan ("HBP") as a local commission (in C.A. 844-846/2020, a connected matter) was directed to be put up in this case which is before us today as C.M.A. 4707/2020. It is pointed out that the power crushers installed in the said village are causing air pollution in the area which raises serious threat to human life and health. The Report of the HBP after inspecting the area formulated the following conclusions: "Regulatory Compliance: High PM concentrations resulting from mining and crushing activities were measured at all the monitoring locations. The measured PM concentrations were not in compliance with the NEQS (24-hour) limits. Long term exposure to such high concentrations of PM_{10} can cause several health effects ranging from coughing, asthma to high blood pressure, cardiac diseases among the residents as well as the staff of the stone crushing plants. PM_{10} is also known to affect animals by causing various respiratory problems and creating additional stress." (See Schedule A to this Order for details).

2. Vide Order dated 15.12.2021, the Court again called for a fresh Report on the compliance of the National Environmental Quality Standards ("NEQS") by the power crushers from HBP as technical counsel with the mandate to carry out site inspection of the stone crushing plants set up in village Suraj Galli and prepare a fresh Report specifically on the presence of particulate matter (PM_{10}) in the air. HBP submitted the Draft Report on 04.4.2022 (C.M.A No.2323/2022). The conclusions drawn by in the Draft Report read as follows:- "The measured PM concentrations were above the 24-hours limit prescribed in the NEQS at all six monitoring locations. Long-term exposure to such high concentrations of PM can cause several health effects ranging from mild coughing to asthma to high blood pressure to cardiac diseases among the residents and the workers of the stone-crushing plants." (See Schedule B of the Order for details).

3. Thereafter, not satisfied with the performance of the power crushers and in order to delve deeper into the issue of environmental degradation in the area, this Court vide Order dated 25.4.2022, was pleased to form a Power Crushers Commission ("Commission") under the chairmanship of Dr. Pervez Hassan. (See Schedule C of this Order for details). The Commission submitted its Final Report (C.M.A 6741/ 2024) on 06.07.2024, when the Chair of the Commission highlighted its final recommendations and conclusions as follows: "The Plants have not met, among others, the NEQS set out in Section 14. The Plants do not comply with the "existing" 300 metre safe distance applicable in the KPK which is borne out in the Report dated 10 August 2020 of Hagler Bailly Pakistan (Annexure A-1) and recorded in the Supreme Court Order dated 15 December 2021. The Plants do not comply with the "existing" NEQS, however unsatisfactory they may be. For the interim, as the Crush Plants at Suraj Gali are non-compliant with the legal and regulatory framework as on 28 May 2024 (the cut-off date of the Commission), the Supreme Court may consider closing

them in the public interest and, subject to the other recommendations of the Commission such as the establishment of Crushing Zones, allow their opening on any of them establishing compliance with a neutral third party appointed by the Supreme Court."(See Schedule D of this Order for details).

4. The Final Report concludes that the three power crushers operating in the area in question are alarmingly violating the NEQS, as well as, the requirement of distance from the local community under the Rules. According to the Report, the $PM_{2.5}$ and PM_{10} levels are much higher than the standards given in the NEQS which result in serious chronic and lifelong diseases for the local inhabitants. The air pollution generated by the power crushers carries calcium carbonate which has adverse effects for human health such as damaging the respiratory tract.[2] It is now well accepted and acknowledged that air pollution affects not just humans but a wide array of environmental and ecological components; (i) Wildlife: Air pollutants can directly harm animals by causing health problems such as respiratory issues, heart disease, and even cancer. Animals can also be affected indirectly through

changes in their habitat and the availability of food and water. (ii) Plants and Forests: Toxic pollutants in the air can damage the leaves of plants and trees, hinder their growth, and reduce their ability to photosynthesize, which is vital for their survival and growth. This not only affects the plants themselves but also the entire ecosystem

that depends on them. (iii) Water Bodies: Air pollution contributes to acid rain, which forms when pollutants from the air are deposited in water bodies, and on vegetation and soils. This can lead to drastic changes in the pH level of waterways, adversely affecting aquatic life and water quality. (iv) Soil Quality: Deposits of pollutants like heavy metals in the soil can alter its composition and health, affecting plant growth and the organisms that depend on the soil, potentially disrupting entire terrestrial ecosystems. (v) Climate Change: Some air pollutants, particularly greenhouse gases like carbon dioxide and methane, contribute to global warming. Others, like sulfur dioxide, can create aerosols that reflect sunlight, affecting atmospheric temperatures and weather patterns. (vi) Visibility and Aesthetic Damage: Pollution can cause smog and haze, which reduce visibility. This not only affects the aesthetic enjoyment of natural landscapes but can also have economic implications for industries like tourism and real estate. (vii) Biodiversity: The cumulative impact of these effects can lead to reduced biodiversity as species that cannot adapt to the altered conditions die out or move to other areas. The interplay between air pollution and the environment is complex, influencing various natural cycles and life forms, and can lead to long-term ecological imbalances.[3]

5. Air pollution causes an estimated one in every nine deaths worldwide, making it the greatest environmental threat to human health. According to the World Health Organization ("WHO"), air

pollution is responsible for an estimated seven million premature deaths worldwide every year.[4] Almost all air breathed by humans exceeds the WHO Guidelines limits. It is pertinent to mention here that no other location on the planet illustrates the stubborn nature of air pollution challenge more than South Asia, where pollution continued its upward trend in 2021. Bangladesh, India, Nepal and Pakistan - where 22.9 percent of the global population lives - are the top four most polluted countries in the world.[5] As per the World Air Quality Report (2023), Pakistan is the second most polluted country in the world with an annual average $PM_{2.5}$ concentration 14 times above the WHO guidelines, leading to a loss in life expectancy of 4.4 years.[6] The most serious issue of air quality in Pakistan is the presence of excessive suspended PM present in the air. The PM is not a single pollutant, but rather is a complex mixture of solids and aerosols composed of small droplets of liquid, dry solid fragments, and solid cores with liquid coatings.[7] These particles vary widely in size, shape and chemical composition and are defined by their diameter for air quality regulatory purposes. Those with a diameter of 10 microns or less PM_{10} are inhalable into the lungs and can induce adverse health effects.[8] Fine PM is defined as particles that are 2.5 microns or less in diameter $PM_{2.5}$. A number of adverse health effects have been associated with both $PM_{2.5}$ and PM_{10} including the worsening of respiratory diseases such as asthma, lung cancer and premature deaths in extreme circumstances. It is noted that the triple-planetary crisis, which comprises of interrelated urgent crisis of climate change, biodiversity loss, and widespread pollution must entrench environmental concerns as supreme constitutional norms.[9] This strand of demand often coined as "environmental constitutionalism" is a relatively recent phenomenon at the confluence of constitutional law, international law, human rights and environmental law and embodies the recognition that the environment is a proper subject for protection in constitutional texts and for vindication by constitutional courts worldwide.[10] By acting as a method of constitutionally entrenching environmental law and protection at a more enduring or "higher" consti-tutional level, environmental constitutionalism entails a transformative approach that relies on constitutions to provide for the architecture of environmental governance, whereupon it then acts to improve environmental protection through various constitutional features such as fundamental rights, recognized principles of environmental governance and the rule of law.[11]

6. Over the years, Pakistan's superior courts have expanded the scope of fundamental rights and judicially interpreted the text of the constitutional fundamental right to life (Article 9) which has been popularly dubbed as right to a clean and healthy environment.[12] Subsequently, the courts have also recognized the right to dignity (Article 14) in Imrana Tiwana[13] and Asghar Leghari[14] that the protection of environment also emerges from the right to dignity which is inviolable and such protection is an inalienable right and perhaps more fundamental than the other rights. It is in this context that right to life and dignity when read with constitutional principles

of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. This protection to environment is also accorded in other international legal instruments[15], which Pakistan has ratified, including the most recent United Nations General Assembly Resolution[16] which recognized that everyone, everywhere, has the right to a clean and healthy environment.

7. Environmental constitutionalism as a concept also finds its ideological roots within Islamic environmentalism as environment and climate change have a strong linkage with our religion.[17] Approaching environmental constitutionalism through the lens of religion and spirituality can indeed be a powerful tool. Seyyed Hossein Nasr[18] criticizes the modern secular worldview for what he perceives as a harmful attitude towards nature. He believes that the current ecological crisis is a spiritual problem rooted in the forgetfulness of the sacred nature of the world. He argues that modernity has led to an exploitative and instrumentalist view of nature, contributing to environmental degradation.[19] Islam can provide a comprehensive and integrated approach to environmental issues, encompassing ethical, social, economic and political dimensions. This foundation, inter alia, includes; (i) Tawhid (Unity of God): The Quranic concept of Tawhid underscores the idea that all things come from one creator. This perspective encourages a holistic approach to the environment, viewing the Earth and all its inhabitants as interconnected and interdependent, (ii) Stewardship (Khalifa): The Holy Quran emphasizes that humans are stewards (khalifas) of the Earth. This concept promotes responsible management of the Earth's resources, (iii) Balance (Meezan): The Holy Quran speaks about balance (Meezan) in creation and warns against upsetting this balance. Climate change, which is driven by human activities, is disrupting the Earth's natural balance, (iv) Avoiding Waste (Israaf): Islam discourages wastefulness (Israaf). The current patterns of consumption and waste, especially in more developed countries, are contributing significantly to greenhouse gas emissions and climate change, (v) Justice (Adl); climate change is also a matter of justice, as it disproportionately affects the poor and vulnerable - people who often have contributed least to the problem and (vi) Hima (Protected Areas): The Islamic principle of Hima refers to a system of community-based management of resources, where certain areas are set aside for the conservation of natural resources, wildlife, and biodiversity.

8. At this juncture, it is important to underscore that environmental crisis pervades our lives. An overwhelming scientific consensus warns us that human-induced climate change is leading to rising sea levels, extreme weather events, and public health disasters.[20] Despite over thirty years of international agreements, global carbon dioxide emissions rose 70% between 1990 and 2020.[21] Biodiversity is collapsing at an unprecedented rate; one million animal and plant

species face complete destruction within decades, because of human activities. Notwithstanding extensive domestic regulation, global standards of air, land and water pollution remain stubbornly high. It is in this perspective of environmental constitutionalism and Islamic environmentalism that we approach the current issue.

9. After hearing the chair of the Commission, the case was fixed today to provide an opportunity of hearing to the power crushers to explain whether they raise any objection on the said Report of the Commission or actual compliance as far as the environmental threats are concerned. We have heard Ch. Aitzaz Ahsan, learned

Sr. ASC and Ms. Zunaira Fayyaz, Advocate. At the very outset, they do not allege any mala fide to the Commission. However, they submitted that the respondents are fully complying with the NEQS, yet they could not refer to even a single document showing their compliance with the same. Learned counsel submits that one of the respondents has invested Rs. 150 Million and purchased equipment

that curtail environmental pollution, however, no evidence has been placed on the record to substantiate this submission. He stated that the local villagers are adding to the pollution by burning various substances, to which Waqar Zakariya (HBP), member of the Commission pointed out that the readings of PM_{10} and $PM_{2.5}$ were taken round the clock, therefore, this intermittent burning does not affect the overall reading.

10. The submissions of the learned counsel for the respondent power crushers are not satisfactory and the findings of the Report have gone unrebutted, in particular, the violation of the NEQS. Learned Advocate General, KPK supported the Report of the Commission and also urged the Court to shut down these plants unless they comply with the NEQS. In order to protect the human life and health of the residents of the area, who have been subjected to these plants for a number of years, we direct the Environmental Protection Agency, KPK ("EPA") to shut down and seal the operations of these stone crushing plants immediately. The respondent owners of the said plants can be allowed to re-operationalize their plants provided they make an appropriate application to this Court satisfying the Court that they now comply with the requirements of the NEQS, which the Court, after verifying this fact through a technical expert may allow. The local Police shall render full assistance to EPA to carry out the Order of this Court in shutting down the stone crushing plants immediately. A copy of this Order shall also be dispatched to the Inspector General Police, KPK for immediate compliance. The Advocate General, KPK shall submit a compliance report to this Court within a week thereof.

11. We also note that the NEQS were passed in 1993 and last updated in the year 2010 and the Federal and Provincial Governments have made no efforts to update the said standards. It is crucial to highlight that by limiting both the quality and quantity of anthropogenic pollutants in the environment, the NEQS serve as

crucial frame-works which facilitate the transition towards a sustainable future. These standards do not only ensure the preservation of ecosystems and protection of public health through preventive measures but also play a significant role in fostering climate resilient development mechanisms by encouraging sustainable production processes in industries. Therefore, the Federal Government as well as the Provincial Governments are directed to update the NEQS within a period of three months from today and submit their updated/revised NEQS before this Court.

12. It is also pointed out that there are 900 other stone crushing plants operating in the province of Khyber Pakhtunkhwa. Let the Provincial EPA carry out detailed report regarding their environmental compliance and safe distance and submit their detailed report in this regard to this Court before the next date of hearing. In case the EPA finds that the said plants do not meet the NEQS or the safe distance requirement under the Rules, the EPA is free to take action against the said plants in accordance with the law.

&&13. Let these matters be relisted in the first week of November for the report of the Provincial Governments regarding the updating/ revision of the NEQS as well as the report on the environmental status of the 900 stone crushing plants. Copy of this Order be dispatched to all the Chief Secretaries of the four provinces and the Chief Commissioner, ICT for compliance regarding updating/ revision of the NEQS.

Schedule-A Excerpts from the Study on Environmental and Social Assessment of Mining and Crushing Activities in District Haripur, KP 6.1 Regulatory Compliance HKG and Niazi Crush Plants are operating without an Environmental Approval for operations from the KP EPA. Extensive deposition of dust was observed on trees, crops, the floor and furniture in houses in the Study Area. This indicates that the mitigation measures adopted by Plant owners until the time when monitoring was carried out as a part of this study are insufficient to control the dust emissions in the area and are therefore, non-compliant to conditions of the Environmental Approval for construction from KP EPA. High PM concentrations resulting from mining and crushing activities were measured at all the monitoring locations. The measured PM concentrations were not in compliance with the NEQS (24-hour) limits. Long term exposure to such high concentrations of PM_{10} can cause several health effects ranging from coughing, asthma to high blood pressure, cardiac diseases among the residents as well as the staff of the stone crushing plants. PM10 is also known to affect animals by causing various respiratory problems and creating additional stress. The settling of limestone dust over a long period results in changes to soil composition and pH, which may affect agricultural output. High noise levels exceeding the NEQS especially the nighttime limits were measured. Although most of the measured noise levels were under 60 dBA, however, long term exposures to such noise levels may cause headaches, sleeplessness, high blood pressure, and multiple

other health issues among the nearby residents and especially among the staff of the stone crushing plants. High noise levels are also associated with hearing loss and increased stress in animals which results in altered mating behaviors. 6.2 Distance to Safeguard Health, Safety and Life of Residents Blasting vibrations are not expected to result in long-term damage to structures at 300 m or beyond (see Section 5.1 for detailed assessment). A safe distance of 378 m should be considered (keeping in mind the potential impact of flyrocks) to ensure the safety of the local community residents and residential structures (see Section 5.2) for the assessment and Section 5.3 for the justification used to obtain this number). Increasing the safe distance should not be considered the only solution to ensure safety of the nearby residents and appropriate mitigation measures to reduce flyrock distance and mitigate flyrock generation should be undertaken (see Section 5.2 for possible mitigation measures.

Schedule B Excerpts from the Draft Report on Particulate Matter Sampling: Stone Crushing Plants, Khanpur The key conclusions that have been made under this Study include the following: PM_{10} concentrations at all the sampling locations substantially exceeded the limits prescribed in the NEQS. Extensive deposition of dust was observed on trees, and crops in the Study Area (Exhibit 2.8). This indicates that the mitigation measures adopted by Plant owners until the time when sampling was carried out as a part of this Study are insufficient to control the dust emissions in the area. The measured PM concentrations were above the 24-hours limit prescribed in the NEQS at all six monitoring locations. Long-term exposure to such high concentrations of PM can cause several health effects ranging from mild coughing to asthma to high blood pressure to cardiac diseases among the residents and the workers of the stone-crushing plants. PM_{10} is also known to affect animals by causing various respiratory problems and creating additional stress. The implementation of appropriate dust control measures is essential to keep the emissions of particulate matter within the limit.

Schedule C CONSTITUTION OF POWER CRUSHERS COMMISSION 1. Dr. Pervez Hassan Chairman 2. Representative of Hagler Bailly Pakistan Member 3. Representative of WWF Member 4. Director, Mineral and Mines, Government of KP Member 5. Director, EPA, Government of KPK Member 6. Representatives of Stone Crushers Member 7. Ahmad Rafay Alam, Environmental Lawyer, Lahore Member 8. Zofeen T Ibrahim, Freelance Journalist. Member Terms of Reference: a) What is the safe distance for installation and operation of power crushers from human dwellings? b) What safety measures must be taken/installed by power crushers for blasting and stone crushing at site at all times? c) What National Environmental Quality Standards (NEQS) must be maintained by stone crushers to safeguard public health? d) What short term and long-term measures to be adopted by crushers in order to be EPA compliant? e) What measures or steps ought to be taken to continuously or regularly monitor the crushing and mining activities of power

crushers to be EPA compliant? f) What measures to be taken by power crushers so as to convert from conventional quarrying to safe and smart quarrying which avoids flying rock and dust? g) What time frame to be fixed for to make their units EPA complaint? h) Recommend specification for cost-effective monitoring equipment with real-time monitoring of wind speed, wind direction, and dust emissions (specifically PM10) generated from operations of stone crushers and blasting activities. i) Draft guidelines to assist the power crushers to achieve effective management and operation of monitoring equipment with due consideration to existing technical capacity and costs. j) Develop a framework that can be used by the regulators to assess the environmental and social performance of stone crushers throughout the province and to share the information with the communities that may be at risk. k) Assess performance of stone crushing plants that have installed and operated equipment to control dust emissions and where applicable provide recommendations that the owners of crush plants may consider to further improve their environmental performance. l) Develop an action plan that considers a phased approach including appropriate safe distance (buffer zone) that will allow stone crushers to transition towards compliance with applicable legal laws in an appropriate time frame and eventually achieve internationally established benchmarks through continual improvement. m) Has the Government of KPK recently established a dedicated crushing zone in Khanpur, a few kilometers away from Suraj Gali; whether it is viable solution to shift/transfer the stone crushers to that zone. n) Any other issue as may be deemed appropriate or relevant to the above TORs or subject matter of crushing and environment.

Schedule D Excerpts from the Report of the Power Crushers Commission Conclusions of the Commission The Commission concludes that, as at 28 May 2024, the cut-off date determined by the Commission, the Suraj Gali Plants were not fully compliant with the existing applicable legal and regulatory regimes. This conclusion emerges from the following considerations: (1) The TOR of the Supreme Court required an assessment of the EPA compliance of the Plants; this meant the entire regulatory framework including "safe distance" and the "NEQS" (applicable to KPK) (2) importantly, the reference to compliance is to the "existing" regulatory framework, irrespective of its inadequacies. The Plants have not met, among others, the NEQS set out in Section 14. (3) it is acknowledged and recorded that the Plants do not comply with the "existing" 300 metre safe distance applicable in the KPK. That the Plants do not meet the applicable safe distance of 300 metres is borne out in the Report dated 10 August 2020 of Hagler Bailly Pakistan (Annexure A-1) and recorded in the Supreme Court Order dated 15 December 2021. (4) the Plants do not comply with the "existing" NEQS, however unsatisfactory they may be. There is a good case for a rationalization of the NEOS; the Commission can include that in its recommendations, which it has done, but it cannot base its recommendations on the NEOS as "they should be". The Commission commends the efforts and investments by the Plant

Owners toward compliance with the support and guidance of the Commission but they could not accomplish satisfactory and full compliance leaving the villagers defenseless against pollution, noise, health hazards, environmental and eco-system degradation and with a continuing risk to the qualities of their lives protected particularly by Articles 9 and 14 of the Constitution. Recommendations of the Commission (1) Adopt, at the national level, a safe distance of 500 metres (Discussion in Section 13(2)(a)). (2) KPK to develop a plan for Crushing Zones and to shift all crushing plants including the Suraj Gali Plants to such zones within a maximum transition period of 3 years. The Commission recommends that the KP Government develop a holistic policy and plan for establishing zone(s) for mining and stone crushing plants. To support the development of policy and plan, the stone crushing plants should develop and submit a comprehensive report to the Industries Department that details: Project information including maps that identify nearby communities, quantity of equipment in place, operating capacity and schedules, and transportation routes. The daily production volumes and output, revenue numbers and operating costs. In the event of relocation, a minimum cost of relocation, number of closure days and the number of employees that will be retained. The mitigation and monitoring measures in place by the crush plant in-line with the requirements of their respective IEEs/EIAs and conditions included in the NOC issued by the KP EPA. The report will be submitted by the industries to the KP Industries Department and the KP EPA. The information will allow the KP Industries Department to make an informed decision on which crush plants can be relocated to dedicated crushing zones based on their environmental performance and opportunity costs involved in relocation to ensure that a sustainable approach that considers both the environment and industrial needs of the province is adopted. In the Balochistan Environmental Protection Act, there is space for District Environmental Protection Agency, there is no such provision in KP Environmental Protection Agency. It is suggested that the KP Environmental Protection Agency may be enabled legally to work closely with the Mining Authority under KP Mines and Mineral Act. The Local Government is empowered to notify land zoning where it would be important that land zoning for purposes of mining and crushing of stones should be in consultation with the Mining Authority and Environmental Protection Agency. (3) to amend and rationalize NEOS to incorporate recent technology and best practices. (4) KPK to resource and develop the capacity of its regulatory agencies to better enforce and implement the laws and regulations. (5) KPK to require crush plants to install effective monitoring equipment for ensuring compliance. (6) KPK to enforce a closure period for all crush plants during winter months notwithstanding compliance to NEOS and safe distance. (7) KPK to establish grievance redressal mechanisms including local governments to assist the affected workers, villagers and the adjoining areas, as per Annexure F-2. (8) KPK to ban the use of old and obsolete equipment for crush plants and require equipment and processes that are environment and people-friendly. (9) A Phased-

Out Action Plan that sets out phased approach for compliance with law. (10) Short and long-term Measures for Legal Compliance: The Industries Department have defined the criteria and classified integrated mining and crushing operations respectively as Large, Medium, or Small. In some cases, the mining activity is separate from the crushing. These classifications and guidelines apply to both independent mining and integrated mining and crushing operations. The Commission recommends a phased approach segregated in three phases as provided below: Period Time Span Measures to be Followed by Crush Plants Short Within 1 year All crush plants designated as 'Large' will: Observe safe distances. Report daily production quantities to the KP Industries Department monthly. Carry out air quality monitoring against NEQS parameters as recommended and report to KP EPA on monthly basis. Adopt all mitigation measures adopted or planned to be adopted by the HKG facility inclusive of mining and crushing. Develop a Grievance Redress Mechanism (GRM) and implement it with involvement of all stakeholders. A framework is provided in Annexure F-2. Upgrade the EMP as included in the approved IEE or EIA of the facility in view of the recommendations of the Commission and submit it to the KP-EPA for review and approval. Where an EMP is not available, conduct an audit of the facility by engaging an independent consultant and prepare an EMP as advised by KP EPA. Cease operations between November and mid-February unless based on monitoring data the KP EPA determines that the facility has sufficient mitigations in place to safeguard the health and safety of communities. Medium Within 2 years All recommendations of the Commission for units designated as Large will also be applied on crush plants designated as Medium. Long Within 3 years All recommendations of the Commission for crush plants designated as Large will also be applied on crush plants designated as Small. In the meantime, no new licenses will be issued to any category of mining and crushing operations that do not obtain an environmental approval from KP EPA and do not comply with the recommendations of the Commission. (11) Specific Measures for Prevention of fly rock, noise, wastewater, and air emissions. Noise and wastewater are included in these mitigations in consideration of the grievances reported by the local community on these aspects. (a) Air Emissions Dust collection systems: Use of dust collection systems such as baghouse filters as implemented by HKG. Water Sprays: Use of water sprays to moisten materials and roadways to settle dust particles. Enclosures and Sealing: Enclosure of conveyor systems and other equipment prevent dust from escaping. Dust Suppressants: Addition of chemicals such as magnesium chloride or calcium chloride during the crushing can bind dust particles and reduce their airborne movement. Vegetative Barriers: Strategic planting of trees and shrubs can act as natural barriers to dust. Measures employed by the HKG crush plant such as dust collection systems, closures around jaw crushers and water sprinkling systems can significantly reduce PM and dust related emissions. Section Error! Reference source not found. identifies the measures implemented by HKG. (b) Flyrock Blasting Techniques: Precise

drilling, accurate timing, and sequencing of blasts can reduce flyrock travel distance. Techniques such as pre-splitting can also help control the direction and limit the extent of flyrock. Blast Mats or Covering Material: Use of blast mats or other durable covering materials over the blast area can significantly reduce the risk of flyrock by absorbing and containing the energy of the blast. Protective Barriers: Constructing earthen berms or other types of barriers around the blasting site can physically block and contain flyrock, directing it back to the ground. Charge and Firing Pattern Adjustment: Modifying the amount of explosive charge and changing the firing pattern can help control the force and direction of the blast, thereby reducing the risk of flyrock. (c) Noise Acoustic Barriers: Erecting barriers or walls to block sound waves from machinery can mitigate noise impacts. Equipment Modification: Using quieter machinery or retrofitting existing equipment with noise-dampening materials. Operational Timing: Limiting the hours of operation, especially during early morning or late evening, to minimize noise impact on surrounding communities. Distance: Placing noisy equipment as far as possible from community areas. (d) Wastewater Primary treatment: Suspended solids can be removed from effluent via simple gravity settling before discharge into drainage systems. The addition of inexpensive flocculants such as lime and alum facilitate effective settling and removal of suspended solids in addition to also allowing for the settling and removal of dissolved solids. Reuse and recycling: The silt-containing runoff can be collected in stormwater collection system and reused for vehicle washing and in sanitary facilities. The KP EPA as part of its review and prior issuance of a No-Objection Certification will ensure that the crush plant owners submitting an EIA or IEE have included the above-mentioned mitigation measures in the documents and have included the relevant mechanisms to ensure implementation within the environmental monitoring and mitigation plans. Recommendations for Interim Orders of the Supreme Court The Court in its order of 25 April 2022 directs that: It is also underlined that only three power crushers are before us, and we have been informed that there are 950 power crushers operating in KPK. Any sustainable solution proposed by the Commission and eventually approved by this Court can go a long way in resolving this issue for the entire Province (paragraph 5). (1) The Commission recommends that the concerned government departments that have a mandate to regulate the power crusher industry should be directed to formulate policies, plans, and procedures to extend the implementation to the entire Province. Both the actions should be time bound as suggested by the Commission in this Report. For the interim, as the Crush Plants at Suraj Gali are non-compliant with the legal and regulatory framework as at 28 May 2024 (the cut-off date of the Commission), the Supreme Court may consider closing them in the public interest and, subject to the other recommendations of the Commission such as the establishment of Crushing Zones, allow their opening on any of them establishing compliance with a neutral third party appointed by the Supreme Court It is added that the Plant Owners particularly the Niazi Plant kept sending the Commission its

progress reports after the cut-off date of 28 May 2024 which the Commission could not assess and leaves for the evaluation of the neutral third party requested to be appointed by the Supreme Court in case the Niazi Plant or any other Plant petitions the Supreme Court for the opening of the Plant. (Emphasis supplied)

MH/A-26/SC Order accordingly.

Case:15 - Bilal Haque---Petitioner

2024 S C M R 1749

[Supreme Court of Pakistan]

Present: Qazi Faez Isa, C.J. and Naeem Akhtar Afghan, J

BILAL HAQUE---Petitioner

Versus

KAMRAN ALI AFZAL, SECRETARY, CABINET DIVISION, ISLAMABAD and others---Respondents

Criminal Original Petitions Nos. 19 and 20 of 2024, decided on 17th August, 2024.

Date of hearing: 15th August, 2024.

ORDER

The learned Attorney-General for Pakistan ('AG') states that on behalf of the Federal Government he has filed Criminal Miscellaneous Application No. 1103 of 2024 which encloses a number of documents. He submits that the Notification whereby Ms. Rina Saeed Khan, the Chairperson of the Islamabad Wildlife Management Board (respectively 'the Chairperson' and 'the Wildlife Board') was removed has been withdrawn vide Notification dated 11 August 2024. The Chairperson we are informed worked for free, and had filed a petition before this Court drawing attention to the desecration and destruction of the Margalla Hills National Park ('the National Park'). On the other hand Mr. Luqman Ali Afzal had filed two petitions for leave to appeal wanting to continue illegally running a huge restaurant in the protected area of the National Park. Their interests collided. Coincidentally Mr. Luqman Ali Afzal is the real brother of Mr. Kamran Ali Afzal, the Cabinet Secretary. We are surprised that someone who voluntarily helped and assisted in the conservation, preservation and maintenance of the National Park was treated in this callous manner by removing her as Chairperson, while indulging those responsible for the destruction of the National Park.

2. Mr. Luqman Ali Afzal had voluntarily agreed to vacate the premises where he was running an illegal restaurant, however, instead of abiding by his statement, which was recorded in the order of this Court dated 11 June 2024, he initiated a media propaganda campaign against the Supreme Court projecting that it was the Supreme Court which was responsible for causing the suffering of all those employed by him in the restaurant by leaving them un-employed and that the absence of his restaurant would be a great loss to all his customers. He propagated this by suppressing the fact

that he was running the restaurant in violation of the law and by destroying the protected National Park. Mr. Luqman Ali Afzal prima facie has disobeyed/ disregarded the order dated 11 June 2024 and appears to have committed a wilful breach of the valid undertaking given to this Court by him and has acted to bring the authority of this Court and the administration of law into disrespect and disrepute, and to lower the authority of this Court and scandalizing the judges of this Court in relation to their official work.

3. The matter from which these Criminal Original Petitions Nos.19 and 20 of 2024 emanate were filed stating that the order dated 11 June 2024 was being disobeyed/violated. In paragraph 3 of the order it was noted that all those running restaurants in the National Park had voluntarily agreed to remove their respective restaurants within three months time. As a matter of indulgence, and since their voluntary removal of restaurant would help preserve and protect the National Park it was observed that if the law permits, they may be given preference in the leasing/allotting/licensing of premises/land for their business by the Capital Development Authority ('CDA').

4. Therefore, show cause notice be issued to Mr. Luqman Ali Afzal to show cause why contempt proceedings should not be initiated against him. He should also state whether he had reached out to his brother, Mr. Kamran Ali Afzal, and had sought the issuance of the Notification regarding removal of the said Chairperson and for the placement of the Wildlife Board under the Ministry of Interior/ Interior Division, by removing it from the Ministry of Climate Change and Environmental Coordination. Mr. Luqman Ali Afzal should submit his reply in two weeks from the date of receipt of show cause notice.

5. The learned AG further states that the Memorandum dated 6 August 2024, through which the Wildlife Board was transferred from the Ministry of Climate Change and Environmental Coordination to the Ministry of Interior/ Interior Division, has also been withdrawn by issuing Memorandum dated 9 August 2024 and that the Wildlife Board shall continue to function under the Ministry of Climate Change and Environmental Coordination (and not under the Ministry of Interior/ Interior Division).

6. The learned AG submits that rule 3 of the Rules of Business, 1973 ('the Rules') vests power in the Prime Minister to allocate business of the Federal Government amongst the different Divisions mentioned in Schedule II of the Rules. However, the business which is allocated amongst the Divisions must have some nexus with the work of the Division and serve the public interest. Schedule II of the Rules, is enacted pursuant to rule 3(3) of the Rules and it lists the different Divisions, including the Establishment Division. Amongst the functions of the Establishment Division is the 'Review of organizations, functions and procedures of the Divisions' and that this be done 'with the objective of improving their efficiency'. Rule 10 (1) (b) of the Rules states that 'a change in the allocation of business between various divisions of a Ministry' must not be done 'without

previous consultation with the Cabinet Division'. In the present case two Divisions were rearranged without the involvement/approval of the Establishment Division and without consulting the Cabinet Division.

7. The Interior Division has many responsibilities, as set out in Schedule II of the Rules. To handover the Wildlife Board and the National Park to the Ministry of Interior/Interior Division was not done with the objective of improving their efficiency. To state the obvious, the Wildlife Board and the National Park do not have the remotest concern with the workings of the Ministry of Interior/ Interior Division, nor does it have any expertise or competence in attending to their affairs. The learned Mr. Umar Ijaz Gillani states that he has attached documents with his contempt petitions that show the past practice of the Federal Government, which has always been to obtain prior approval of the Federal Cabinet before transferring any business from one Division or Ministry to another, but in the present case this too was not done.

8. On the last date (9 August 2024) we had directed Mr. Kamran Ali Afzal and Mr. Eazaz A. Dar, respectively the Secretary Cabinet Division and the Secretary Ministry of Climate Change and Environmental Coordination to be in attendance. In response to our query Mr. Kamran Ali Afzal stated that the Notification removing

the Chairperson and the Memorandum which placed the Wildlife Board under the Ministry of Interior/Interior Division was done on the instructions of the Prime Minister, but a bit later contradicted himself and stated that it was done at the behest of the Ministry of Interior.

9. To ensure that the undertaking given to this Court and order dated 11 June 2024 is being complied with we direct CDA, through its concerned directorate, to visit all the said restaurants, take photographs and submit a report as to whether steps are being taken to dismantle the restaurants in the National Park, as the permissible three months are to expire soon.

10. With regard to the matter of 'Pine City' the learned Hafiz Arfat Ahmed who represents CDA states that he has filed Criminal Miscellaneous Application No. 1100/2024 wherein it is categorically stated that CDA has no concern with Pine City, which is situated in Makhniyal in the jurisdiction of the province of Khyber Pakhtunkhwa. He further states that the acronym and logo of CDA on the banners put up by Pine City was done without obtaining the approval or permission of CDA and the same was done to deceive the public, and upon coming to learn of this CDA has registered FIR No. 372/2024. We are surprised that all the officers of the CDA remained oblivious to the banners which had been put up in the heart of Islamabad, including on the Constitution Avenue and on the grill wall of Parliament, and only once the matter was brought to this Court's attention and notice was issued that CDA came to learn

of it. Such neglect does not inspire confidence in the working of the CDA.

11. In Human Right Case No. 318 of 1993 vide order dated 19 May 2020, passed therein by a five-member Bench of this Court, it was ordered to stop all construction in the Margalla Hills, as under:

'1. At the outset, pursuant to the order of this Court dated 05.03.2020, it is stated by the Advocate General, Islamabad Capital Territory, Deputy Attorney General, Acting Chairman Capital Development Authority/Chief Commissioner, ICT that the whole of the Margalla Hills, spreading in Islamabad, K.P. and Punjab, has since long declared as a heritage site and National Park, and no part of it can be allotted to any private person, either for residential purposes or for any sort of commercial activity. We have been informed by the Acting Chairman, CDA that a large number of restaurants have been established in the Margalla Hills, amongst them Monal restaurant is a famous one, and there are rental residential premises by the name of Pine Residencia, Whispering Pine and some other residential premises constructed in the Margalla Hills which are being offered as hotels/guest houses, etc. and they are being advertised openly. It is stated that all these constructions are illegal and against the very spirit of the Margalla Hills being declared as a heritage site and National Park, and all such constructions and activities have to be stopped and demolished, and the Margalla Hills restored as heritage and National Park.

2. We are informed that a large number of trees have been removed and cut-down for stated expansion of the Monal restaurant and the Acting Chairman CDA/Chief Commissioner I.C.T. is fully familiar with such situation and states that he has taken action on this occurrence and sealed the Monal restaurant. He has further assured the Court that the trees that have been cut-down or removed by Monal restaurant shall be restored with sufficiently tall and grown up trees. Action against all those premises, which are operating for commercial or residential purposes in the Margalla Hills be initiated to ensure their removal. We, however, direct that notices be issued to all the alleged owners/ occupants of the premises in the Margalla Hills who shall appear before the Court on the next date of hearing. The expansion or construction work of Monal or any other Restaurant or any other premises in the Margalla Hills is stayed altogether.'

Part of the Margalla Hills is in the province of the Khyber Pakhtunkhwa, therefore, we issue notice to the Government of Khyber Pakhtunkhwa and direct it to file concise statement under the signatures of the Chief Secretary, Secretary Forest and Director-General, Galiyat Development Authority, stating/disclosing the construction and projects which are being raised therein.

12. The learned Mr. Shah Khawar states that he represents the sole proprietor of Pine City, namely, Mr. Siddique Anwar ('Mr. Anwar'),

and has filed Criminal Miscellaneous Application No. 1105/2024 which attaches a number of documents. He informs that Mr. Anwar is a tax payer and refers to the extract from the record of the Federal Board of Revenue ('FBR'), however, this document raises the question why against the name of Pine City the 'business address' is shown as '57-C C/O P P & A DTE GHQ'. No satisfactory answer was forthcoming in this regard. Instead Mr. Anwar states that he is a former Captain of the Pakistan Army, which he left in the year 1999, and conducts the business of real estate. Mr. Anwar in showing GHQ as his business address and himself as Captain raises the question whether this was done to mislead and/or to gain an advantage. Another document filed by him is a letter dated 11 June 2024 written by the Assistant Director Makhniyal of the Galiyat Development Authority, Government of Khyber Pakhtunkhwa. However, the Director General, Galiyat Development Authority, namely, Mr. Shahrukh Ali, states that they did not register Pine City instead through letter dated 11 June 2024 had asked for the 'relevant land documents (Fards)', but the same till date have not been provided. Mr. Anwar, however, states that he purchased 600 kanals of land from Raja Sikandar Zaman Khan in the year 2016 at a price of 350 million rupees and can produce documents in this regard. Mr. Anwar, however, undertakes not to raise any construction in the Margalla Hills under the name and style of Pine City or otherwise. Therefore, in view of Mr. Anwar's undertaking no further action in this regard need be taken by this Court regarding him or the Pine City. Needless to state that if construction is raised by him/Pine City the concerned authorities should immediately proceed to stop such construction, failing which they will be proceeded against.

13. During the hearing reference was also made to a business venture running under the name and style of Dinosaur or Dino Valley which is stated to be situated in the Margalla Hills National Park that is within the province of Khyber Pakhtunkhwa. Therefore, notice be issued to the Government of Khyber Pakhtunkhwa which should provide details regarding the Dinosaur/Dino Valley, including of its owner(s), the permission granted to operate it together with photographs and aerial photographs of the area. Photographs and aerial photographs of the said Pine City area in Khyber Pakhtunkhwa be also filed.

14. Whilst it is to be appreciated that the Prime Minister had decided to withdraw the said Notification and the said Memorandum, but at the same time it brings into the question the manner in which things were managed and done. The Prime Minister will be well-served to consider whether Mr. Kamran Ali Afzal, the Cabinet Secretary, had advised him in the public interest or had failed to do so, and whether Mr. Kamran Ali Afzal had disclosed that Mr. Luqman Ali Afzal was his brother.

15. During the hearing reference was also made by the said Secretaries to the Islamabad Nature Conservation and Wildlife Management Act, 2023, however, it was pointed out that the same

had not received the assent of the President. The learned AG to file a concise statement clarifying whether the same is a duly enacted law, and if it is then to ensure that it is published in the official Gazette. However, if he considers that it does not constitute law to submit written reason in this regard. For the time being the attendance of the said two Secretaries is not required.

16. All filings as mentioned above should be done in two weeks. To be listed thereafter.

MWA/B-4/SC Order accordingly.

Case:16- Ch. Rizwan Ali Raa---Petitioner

2024 C L D 1089

[Lahore]

Before Shahid Karim, J

Ch. RIZWAN ALI RAA---Petitioner

Versus

GOVERNMENT OF PUNJAB and others----Respondents

Writ Petition No.30823 and 30822 of 2024, decided on 17th May, 2024.

ORDER

SHAHID KARIM, J.---This order will also decide connected W.P.No. 30822/2024 as similar questions of law have been raised in these petitions.

2. Notices were issued and report has been filed by the learned Members of the Judicial Water and Environmental Commission regarding a scheme sought to be launched by the Government of Punjab to provide motorcycles to the students. Under the scheme the proposal is to provide 23000 bikes to the students of which 19000 would be petrol bikes (The Scheme). This raised concerns regarding environment pollution and adverse impact on the environment by induction of a large number of motorcycles in the traffic pattern of Punjab. It is made clear that this issue has engaged the attention of this Court purely because of environmental concerns which strictly affects the right to life enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan, 1973. Two reports have been filed on behalf of Transport and Masstransit Department, Government of Punjab. To reiterate, this Court is not concerned with the other aspects of the scheme which is within the domain of the Government but merely relates to the impact on environment by the launch of the scheme. Different applications were filed which have now been converted into instant constitutional petitions and which are being heard and disposed of together.

3. Learned Advocate General Punjab on the last date of hearing as well as learned Assistant Advocate General have been heard today as also the Secretary Transport and Masstransit Department, Government of Punjab have been heard in the matter. There are various reports placed on the record filed by the Urban Unit, Government of Punjab as well as World Bank and other Multilateral Agencies which establish in different studies that of the various factors vehicular emission constitutes the largest proportion of pollution being caused. Out of the entire bulk of vehicular emission,

the major contributor to pollution is the emission by motorcycles. Therefore, it should be of deep concern for any reasonable Government to engage in a priorly conducted feasibility study regarding impact of induction of thousands of motorcycles into the mainstream traffic of Punjab.

4. The Punjab Environmental Protection Act, 1997 ("Act, 1997") assumes significance in this regard. Adverse environmental effect has been defined as:

"(i) "adverse environmental effect" means impairment of, or damage to, the environment and includes-

(a) impairment of, or damage to, human health and safety or to biodiversity or property;

(b) pollution; and

(c) any adverse environmental effect as may be specified in the regulations;"

5. Project in the Act, 1997 means:

"project" means any activity, plan, scheme, proposal or undertaking involving any change in the environment and includes-

(a) construction by use of buildings or other works;

(b) construction or use of roads or other transport systems;

(c) construction or operation of factories or other installations:

(d) mineral prospecting, mining, quarrying, stone-crushing, drilling and the like;

(e) any change of land use or water use; and

(f) alteration, expansion, repair, decommissioning or abandonment of existing buildings or other works, roads or other transport systems, factories or other installations;"

6. Lastly, proponent has been defined as:

"proponent" means the person who proposes or intends to undertake a project;

7. A cumulative reading of these definitions would clearly show that a project would mean any activity, plan, scheme or undertaking involving any change in the environment. Doubtless, the scheme being proposed by the Government is such a scheme and would involve a change in the environment and there can be no two opinions about this aspect. The launch of the scheme would be caught by the definition of adverse environmental effect and would cause pollution and impairment of human health and safety. Since

the scheme is definitely a project within the meaning of the Act, 1997, this would trigger Section 12 which provides that:

"12. Initial environmental examination and environmental impact assessment.- (1) No proponent of a project shall commence construction or operation unless he has filed with the Provincial Agency an initial environmental examination or where the project is likely to cause an adverse environmental effect, an environmental impact assessment, and has obtained from the Provincial Agency approval in respect thereof.

(2) The Provincial Agency shall-

(a) review the initial environmental examination and accord its approval, or require submission of an environmental impact assessment by the proponent; or

(b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, or require that the environmental impact assessment be re-submitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to-

(i) trade, manufacturing or business activities, processes or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reasons to be recorded in writing, the Director - General of the Provincial Agency is of the opinion that the request for confidentiality is not well-founded or the public interest in the disclosure outweighs the possible prejudice to the competitive position of the project or its proponent; or

(ii) International relations, national security or maintenance of law and order, except with the consent of the Government; or

(iii) matters covered by legal professional privilege.

(4) The Provincial Agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules and regulations made thereunder.

(5) Subject to subsection (4) the Government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.

(6) The provisions of subsections (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed.

(7) The Provincial Agency shall maintain separate Registers for initial environmental examination and environmental impact assessment project, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in subsection (3)."

8. The provisions set out above is couched in mandatory terms and prohibits any project to commence unless an environmental impact assessment has been filed with the Provincial Agency whose approval has been obtained in this regard. This, a fortiori, applies to a scheme or undertaking by the Government and is of the essence of a responsible Government. This has admittedly not been done by the Transport Department while formulating the scheme and obtaining its approval from the Government. The Secretary present in the Court does not dispute the applicability of the Act, 1997 under these circumstances. Finally, section 19 makes it an offence for any Government Agency to proceed with the implementation of the scheme without the approval of the Provincial Agency and the head of that Government Agency will be directly liable for being punished under the provisions of the Act, 1997. Therefore, it can be culled out from the above narration of the provisions of Act, 1997 that an Environmental Impact Assessment (EIA) as a sine qua non was to be submitted by the Transport Department with regard to the scheme to the Provincial Agency and an approval had to be obtained priorly before the scheme was formally launched. This can still be done by the Transport Department which is under obligation to do so.

9. In view of the above, these petitions are disposed of with a direction that before the scheme is formally put into effect and the distribution of petrol motorcycles takes place, an EIA shall be submitted to the Provincial Agency for its approval in accordance with law. Once that approval has been granted, this scheme may proceed ahead. It is further made clear that the Provincial Agency shall engage private and independent consultants to review the EIA so submitted and thereafter proceed to grant or refuse approval on the basis of the recommendations. The fee of the independent consultants shall be borne by the Transport Department. Until the approval is granted, the scheme shall be held in abeyance and no further steps shall be taken by the Transport and Masstransit Department with regard to the scheme.

MH/R-9/L Order accordingly.

Case 17: Dr. Aziz Ur Rehman And Others---Petitioners

2024 C L D 230

[Islamabad]

Before Miangul Hassan Aurangzeb, J

Dr. AZIZ UR REHMAN and others---Petitioners

Versus

FEDERATION OF PAKISTAN through Secretary Cabinet and others---Respondents

Writ Petitions Nos. 3916, 4077, 4371 and 4543 of 2022, decided on 9th December, 2022.

Dates of hearing: 31st October, 4th November, 2nd, 6th and 9th December, 2022.

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.---Through this judgment, I propose to decide Writ Petitions Nos. 3916/2022, 4077/2022, 4371/2022, and 4543/2022 since they entail certain common features.

2. Through Writ Petition No.3916/2022 the petitioners, Dr. Aziz-ur-Rehman and others, who are members of the teaching faculty of the Quaid-e-Azam University, Islamabad ("Q.A.U."), seek a declaration that the decision taken by the Capital Development Authority ("C.D.A.") regarding the construction of the Bhara Kahu Bypass Road ("B.K.B. Road"), only to the extent of the same passing through the land allotted to Q.A.U., is unlawful. The petitioners have also voiced their grievances against the steps being taken by C.D.A. pursuant to the decision taken in the 7th meeting of C.D.A. Board held on 17.06.2022 to allot to Q.A.U. alternate land measuring 225 kanals adjacent to the boundary of Q.A.U. in exchange for the land that is to be used for the construction of the B.K.B. Road.

3. Dr. Anwar Shah, the petitioner in Writ Petition No.4077/2022, is an Associate Professor (Economics) at Q.A.U. and seeks a declaration to the effect that the land allotted to Q.A.U. for educational purposes could not be used for any other purpose, including the construction of the B.K.B. Road. He is also assailing the notification dated 14.10.2022 issued by the Ministry of Federal Education and Professional Training constituting the Joint Working Group mandated to conduct negotiations with C.D.A. on the construction of the B.K.B. Road.

4. The petitioners in Writ Petition No.4371/2022 are two members of the teaching faculty in Q.A.U. and have called in question the hearing conducted by the Pakistan Environmental Protection Agency ("P.E.P.A.") on 18.11.2022 and notice dated 18.10.2022 issued by P.E.P.A. for the said hearing.

FACTUAL BACKGROUND:-

5. Doxiadis Associates-Consulting Engineers had prepared a Programme and Plan for Islamabad. As per the judgment in the case of Prof. Zahid Baig Mirza v. The C.D.A. (PLD 2022 Islamabad 398), the Programme and Plan sets out the Master Plan for Islamabad. It provides for educational and research institutions such as National University, National Research Institution, etc. to be built in the area designated as the National Park. It is not disputed that sometime in the 1960s the site of the National University was shifted from the area in the National Park south of Murree Road to its north where Q.A.U. is presently situated.

6. The University of Islamabad was established pursuant to the provisions of the University of Islamabad Act, 1973 enacted on 09.02.1973. This Act was amended by the University of Islamabad (Amendment) Act, 1976 enacted on 02.09.1976 by virtue of which the "University of Islamabad Act, 1973" was renamed as "Quaid-e-Azam University Act, 1973" ("Q.A.U. Act") and the "University of Islamabad" was renamed as the "Quaid-e-Azam University."

7. Section 3(3) provides that Q.A.U. shall be a body corporate and shall have perpetual succession and a common seal, and shall by the said name sue and be sued, whereas section 3(4) provides that the University shall be competent to acquire and hold property, both movable and immovable, and to lease, sell or otherwise transfer any movable or immovable property which may have become vested in or been acquired by it.

8. The letter dated 04.02.1976 from C.D.A. shows that possession of 1709 acres, 04 kanals and 12 marlas of land in villages Malpur, Jhang Bagial, Kot Hathial, and Noorpur Shahan had been handed over to the representatives of the University of Islamabad on 09.12.1967 and 30.06.1972. C.D.A. had demanded Rs.39,57,577/- as premium and annual ground rent at the rate of Rs.1 per acre with effect from the date of possession. After payment of the said amount, a transfer deed was to be prepared for which the stamp duty and registration fee were to be paid by the allottee.

9. Vide letter dated 15.12.1988, C.D.A. offered land measuring 1445.10 acres to be leased to Q.A.U. for a period of thirty three years extendable to two subsequent terms of thirty-three years each for the construction of buildings for Q.A.U. This letter shows that an amount of Rs.33,45,319.70 had already been paid to C.D.A. as premium. This letter also shows that the date of the allotment was 04.02.1976, and that Q.A.U. had to pay annual ground rent at the rate of Rs.1 per acre in advance with effect from the date of the

allotment. As per the contents of the said letter, "proper allotment containing detailed terms and conditions" was to be issued after handing over possession of the land.

10. Vide letter dated 30.01.1991, C.D.A. demanded payment of Rs.10,80,774.32 for the 1709 acres, 04 kanals and 12 marlas of land possession whereof had already been taken over by Q.A.U. The receipt dated 13.05.1991 issued by the Estate Management Directorate of C.D.A. shows that Q.A.U. had deposited Rs.10,80,774.32 with C.D.A. as the cost of the land. In C.D.A.'s letter dated 15.01.2019, it has been confirmed that Q.A.U. has made full payment for the 1709 acres, 04 kanals and 12 marlas of land to C.D.A., but the annual ground rent for the said land was still outstanding.

11. In the year 2012 an attempt was made by C.D.A. to construct a road on the land allotted to Q.A.U. On 09.01.2012, Q.A.U. had filed a two-page petition (Writ Petition No.41/2012) seeking the issuance of a writ of prohibition to C.D.A. restraining it from constructing a road on the land allotted to Q.A.U. Vide order dated 07.06.2022, the said petition was disposed of as having been rendered infructuous. This Court recorded the submission of Q.A.U.'s counsel that he was under instructions not to press the petition as it had become infructuous.

12. It is an admitted position that unchecked, unsupervised, unplanned, and unregulated construction in the Village of Bhara Kahu has led to severe traffic congestion on Murree Road passing through the said village. It is also not disputed that the need for the construction of a road bypassing the said village is a matter of public need and interest. It was with this intended purpose that C.D.A. decided for the Margalla Road to be extended such that it not just connects with Murree Road through a junction but also to the B.K.B. Road.

13. A presentation on the alignment of Margalla Road (Phases-I and II) was made by the representatives of the Frontier Works Organization ("FWO") to C.D.A. Board in its 7th meeting held on 17.06.2022. Apparently no summary had been presented before the Board on this matter. The minutes of the said meeting show that Margalla Road is 33 KM long from GT Road to Bhara Kahu. Its first Phase is from GT Road to Sector D-12 on which 70% of the work has been completed. In the said meeting, it was decided that 8 KM long B.K.B. Road will be constructed from Murree Road near Q.A.U. to Satra Meel. A stretch of 1.32 KM of this road was to pass through land allotted to Q.A.U. The C.D.A. Board inter alia approved the exchange of land owned by C.D.A. with Q.A.U.'s land falling in the alignment of the B.K.B. Road.

14. Vide letter dated 22.09.2022, C.D.A. accepted the bid submitted by the National Logistics Cell ("N.L.C.") for the award of the contract for the design and construction of the B.K.B. Road for the contract price of Rs.6,515,078,155/-. The letter of commencement was

issued by C.D.A. on 05.10.2022. The 5.33 KM Bhara Kahu Bypass Project entails the construction of 4 KM Bhara Kahu Bypass Road; signage/drainage; an underpass on Shah Dara Road; an underpass on Kayani Road; and 1.33 KM elevated highway with ramps.

15. Apparently, on 08.10.2022, a meeting between the officials of C.D.A. and Q.A.U. took place to resolve the issues arising from and relating to the construction of the B.K.B. Road including the issue of exchange of land between C.D.A. and Q.A.U. In its letter dated 08.10.2022, C.D.A. expressed its intention to allot 225 kanals of land in Mouza Malpur free from all encumbrances to Q.A.U. in exchange of Q.A.U.'s land falling under the B.K.B. Road. Q.A.U. was asked by C.D.A. to complete the necessary formalities for the exchange of land.

16. Vide letter dated 11.10.2022, C.D.A. offered to Q.A.U. 225 kanals of land adjacent to Q.A.U.'s eastern boundary. It was also offered that this land would be levelled through C.D.A.'s indigenous resources so that the same could be utilized by Q.A.U. as and when considered necessary.

17. An emergency meeting of Q.A.U.'s Syndicate was called on 12.10.2022. In this meeting, the matter regarding C.D.A's proposal to allot 225 kanals of C.D.A. owned land along the eastern boundary of Q.A.U. to be exchanged with Q.A.U's land to be used for the B.K.B. Road was discussed. Most of the members of the Syndicate endorsed the proposal for the exchange whereas others opposed it. In this meeting, it was inter alia resolved as follows:-

"The Syndicate further resolved that for now it conditionally approves the construction of Barakahu Bypass on QAU's land and would hold a subsequent meeting on the next Thursday October 20th, 2022 to give final approval considering the recommendations of the joint working group."

18. The instant writ petition was filed on 17.10.2022 by some of the faculty members of Q.A.U. and was taken up for hearing on 18.10.2022. After this Court was informed that the construction work on Q.A.U.'s land had been commenced by the contractor engaged by C.D.A. and in this process, several trees had been felled without having obtained an approval of the Environmental Impact Assessment ("E.I.A.") in terms of section 12(1) of the Pakistan Environmental Protection Act, 1997 ("the 1997 Act"), an ad interim injunction dated 18.10.2022 was issued restraining further construction activity to be undertaken within the boundary of Q.A.U. This Court also directed the Director General, P.E.P.A. to depute a team of inspectors to visit the project site and submit a report as to the status of the construction work and whether construction had been initiated by State controlled organizations without obtaining approval of the E.I.A. from the P.E.P.A. Furthermore, this Court directed the Vice Chancellor of Q.A.U. to depute a representative to tender appearance before this Court and take a position on whether the decision for the exchange of land had

been taken by the management of Q.A.U. empowered by the Q.A.U. Act to do so.

19. At this stage, it may be mentioned that section 22 of the Q.A.U. Act sets out the powers and duties of the Syndicate, which is the Executive Body of Q.A.U. and is mandated to exercise general supervision over the affairs and management of the property of the University. Section 22(2)(a) provides that the Syndicate shall have the power to hold, control and administer the property and funds of Q.A.U. Section 22(2)(d) empowers the Syndicate to transfer and accept transfer of movable and immovable property on behalf of Q.A.U. The composition of the Syndicate is provided for in Section 21 which shows that the Vice-Chancellor of Q.A.U. is the Chairman of the Syndicate.

20. On 24.10.2022, the Director General, P.E.P.A. filed a report according to which, on 05.09.2022, C.D.A. had submitted a report on the E.I.A. pertaining to the construction of the B.K.B. Road to P.E.P.A. After a preliminary scrutiny of the said report under Regulation 9 of the Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations, 2000 ("the 2000 Regulations"), P.E.P.A., vide letter dated 11.10.2022, directed C.D.A. to give a detailed presentation on the project. A presentation was given by C.D.A. on 12.10.2022. Thereafter, C.D.A. was directed to submit a revised report on the E.I.A. by incorporating therein the observations of P.E.P.A.'s review committee and the Director General, P.E.P.A. These observations are enumerated in the minutes of the meeting dated 12.10.2022 between C.D.A. and P.E.P.A.

21. C.D.A. submitted a revised report on the E.I.A. to P.E.P.A. on 18.10.2022. While the said report was under consideration, P.E.P.A. on 18.10.2022 published an advertisement for holding a public hearing on the E.I.A. report. The public hearing was scheduled to be held on 18.11.2022 in accordance with the requirements of Regulation 10 of the 2000 Regulations.

22. After the order dated 18.10.2022 was passed by this Court, an inspection committee constituted by P.E.P.A. visited the project site on 22.10.2022 and prepared a site inspection report according to which the construction activity already carried out by C.D.A. was in violation of section 12 of the 1997 Act. For this violation, P.E.P.A. had initiated the process of imposing an administrative penalty under section 17(7) of the said Act and Rules 6 to 8 of the Compounding of Offences and Administrative Penalty Rules, 2015 ("the 2015 Rules") by issuing a show cause notice dated 20.10.2022 to the Deputy Director (Roads-II), C.D.A. C.D.A.'s reply dated 21.10.2022 to the said show cause notice shows that the contractor had mobilized at the site and works had commenced in order to meet the deadlines under the construction contract (which is not on the record). Admittedly, works had commenced prior to obtaining approval of the E.I.A. in terms of section 12 of the 1997 Act. The proceedings pursuant to the said show cause notice culminated in

the issuance of notice dated 15.11.2022 from the P.E.P.A. to C.D.A. requiring the latter to deposit an administrative penalty to the tune of Rs.1 million within a period of ten days. I am told by the learned counsel for C.D.A. that the said amount has been deposited under protest and that C.D.A. intends to assail the said notice.

23. The Joint Working Group that had been constituted pursuant to Q.A.U.'s Syndicate's decision taken in the emergency meeting dated 12.10.2022 had prepared a report which came to be considered by the Syndicate in its emergency meeting held on 21.10.2022. The minutes of the said meeting show that the Syndicate, by majority, accorded an in-principle approval to the construction of the B.K.B. Road on Q.A.U.'s land if Q.A.U.'s demands listed in "Schedule-A" hereto were accepted by C.D.A.

24. On 04.11.2022, this Court was informed that the demands made by the Syndicate of the Q.A.U. to C.D.A. had not been accepted. Until then, an approval to the E.I.A. report submitted by C.D.A. had not been granted by P.E.P.A. Given the urgency in the matter, this Court expressed the view that the Federal Government ought to play the role of a mediator between Q.A.U. and C.D.A. For this purpose, the matter was adjourned for a week.

25. On 11.11.2022, the learned Additional Attorney-General brought on record a letter dated 10.11.2022 issued by the Prime Minister's office according to which a Cabinet Sub-Committee had been constituted to resolve the dispute regarding the construction of the B.K.B. Road on Q.A.U.'s land. The said Committee comprised of the Federal Minister for Law and Justice and the Federal Minister for Information and Broadcasting. This Court ordered for the outcome of the deliberations of the said Committee to be intimated to the Court on 21.11.2022.

26. The said Committee had meetings with the representatives of C.D.A. and Q.A.U. on 15.11.2022 but the disputes could not be resolved. On 21.11.2022, an adjournment was sought by the learned Additional Attorney-General for a week so that further opportunity could be given to the said Committee to resolve the disputes between Q.A.U. and C.D.A.

27. On 21.11.2022 the Assistant Director, P.E.P.A. tendered appearance and brought on record a report, paragraph 7 whereof is reproduced herein below:-

"7. CDA has submitted the reply on 20.11.2022 against comments/reviews submitted by expert committee and public during hearing on 18.11.2022, same found acceptable, due to firm commitment of CDA to follow the directions and final decisions for EIA with conditional approval will be issued which is conditional to the submission of Administrative Penalty already imposed, under the Rules, 2015."

28. On 25.11.2022, the Assistant Director, P.E.P.A brought on record P.E.P.A's approval dated 24.11.2022 to the E.I.A. report submitted by C.D.A. for the "construction of the Bhara Kahu Bypass at Bhara Kahu Islamabad." The learned Additional Attorney-General after informing the Court that the Cabinet Sub-Committee had afforded an opportunity of a hearing to the petitioners sought an adjournment for a period of one week so that the recommendations/findings of the Cabinet Sub-Committee could be submitted to the Federal Government for a decision.

29. The report of the Cabinet Sub-Committee was brought on record through an application (C.M. No. 4450/2022). The said report shows that 199 kanals of the land allotted to Q.A.U. would be used for the construction of the B.K.B. Road. After being satisfied that access to Q.A.U. would in no manner be impeded by the construction of the B.K.B. Road, the said Committee recommended that the project is one of public importance and its execution would reduce the suffering of commuters on Murree Road. It was also recommended that the C.D.A. be directed to fulfill obligations and commitments to Q.A.U. mentioned in the Syndicate's meeting dated 21.10.2022 as subsequently modified by the said Committee. The said report was placed before the Cabinet, in its meeting dated 30.11.2022, which approved the recommendations made therein.

30. On 05.12.2022, Q.A.U. filed Writ Petition No.4543/2022 challenging the decisions taken by C.D.A. Board in its meeting dated 17.06.2022 as well as the Cabinet's decision dated 30.11.2022.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE CONTESTING PARTIES:-

31. Mr. Kashif Ali Malik, learned counsel for the petitioners in Writ Petition No. 3916/2022, after narrating the facts leading to the filing of the instant petition, submitted that the fundamental right of access to education would be impeded with the construction of the B.K.B. Road through land owned by Q.A.U.; that the public interest in the construction of the B.K.B. Road cannot be given priority over the right of access to education; that the decision taken by the C.D.A. Board, in its 7th meeting held on 17.06.2022, to exchange Q.A.U.'s land which was to come under the B.K.B. Road with C.D.A.'s land adjacent to Q.A.U. was not based on any summary and amounted to change in Islamabad's Master Plan which could only be made by the Federal Government; that the construction of the B.K.B. Road project is a violation of the Master Plan; that Q.A.U. intends to establish China-Pakistan Joint Research Centre at the location where the B.K.B. Road is to be constructed; that the Syndicate of Q.A.U. cannot take a decision which is to the detriment of the fundamental rights of the students in Q.A.U.; that the respondents have committed a grave illegality by starting construction work without having obtained an approval of the E.I.A. from P.E.P.A.; that C.D.A. ought to have explored options other than making a road through land duly allotted to Q.A.U.; and that since Q.A.U. is located in the National Park area therefore a road cannot

be constructed through the said area. In making his submissions, learned counsel for the petitioners placed reliance on the judgments reported as Raja Zahoor Ahmed v. C.D.A. (2022 SCMR 1411), Murree Brewery Co. Ltd. v. Pakistan (PLD 1971 SC 279), Federal Government Employees Housing Foundation v. Ednan Syed (PLD 2022 Islamabad 273), Shahzada Sikandar ul Mulk v. C.D.A. (PLD 2019 Islamabad 365) and Park View Enclave (Pvt.) Ltd. v. C.D.A. (2018 CLC 947).

32. Mr. Aziz-ul-Haque Nishtar, learned counsel for the petitioner in Writ Petition No.4077/2022, adopted the arguments of the learned counsel for the petitioners in Writ Petition No. 3916/2022 and further relied on Quranic verses to lay emphasis on the importance of education.

33. Mr. Muhammad Munir Paracha, learned counsel for Q.A.U., the petitioner in Writ Petition No.4543/2022, submitted that Article 25-A of the Constitution obligates the State to provide free and compulsory education to all children of the age of 05 to 16 years in such a manner as may be determined by law; that Article 38(d) of the Constitution provides inter alia that the State shall provide basic necessities of life such as education for all citizens irrespective of sex, caste, creed, or race as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment; that C.D.A. was hindering the right to education by constructing a road through land owned by Q.A.U.; that section 12(1) of the Capital Development Authority Ordinance, 1960 ("the 1960 Ordinance") empowers C.D.A. to call upon a local body or agency to prepare a scheme, whereas under section 12(2)(d) of the said Ordinance such a scheme may relate to transportation, communications, highways, roads, streets, and railways etc.; that under section 13 of the 1960 Ordinance, C.D.A. can itself prepare a scheme for Specified Areas when it considers it desirable to do so in the public interest; that the scheme regarding the B.K.B. Road could not have been undertaken by C.D.A. without fulfilling the prerequisites in section 13 of C.D.A. Ordinance; that section 15(2)(ii) of C.D.A. Ordinance empowers the C.D.A. to undertake any work in the Specified Areas in pursuance of a scheme prepared under section 13; that there is no resolution of C.D.A. to the effect that it was desirable and in the public interest for C.D.A. to undertake the construction of the B.K.B. Road; that at no material stage, was any scheme prepared by C.D.A. for the construction of the B.K.B. Road pursuant to Section 13 of the 1960 Ordinance; that at no material stage did the Syndicate of Q.A.U. grant an unconditional approval for the construction of the B.K.B. Road over land owned by Q.A.U.; that since the Syndicate's acceptance of C.D.A's. proposals was qualified and conditional, it cannot be considered that Q.A.U. had acquiesced to the construction of the said road over its land; and that if C.D.A. accepts all the demands made by Q.A.U. then the B.K.B. Road may be constructed on the land owned by Q.A.U. Learned counsel for Q.A.U. prayed for the said writ petition to be allowed in terms of the relief sought therein.

34. Mr. Jalil Akhtar Abbasi, learned counsel for the interveners / residents of Bhara Kahu and commuters on Murree Road submitted that the B.K.B. Road project was one of public importance since the suffering of the commuters was increasing with time.

35. Messrs Hafiz Arafat Ahmad Chaudhry and Muhammad Nazir Jawad, learned counsel for C.D.A., submitted that Q.A.U.'s Syndicate in its meeting dated 21.10.2022, had accepted the proposals made by C.D.A. in its letter dated 11.10.2022; that the petitioners in Writ Petitions No.3916/2022 and No.4077/2022 are faculty members in Q.A.U. and cannot take a position different from the one taken by Q.A.U.'s Syndicate; that 1.32 KM of the B.K.B. Road would be passing through Q.A.U's land; that C.D.A. is ready to allot 225 kanals of alternate land to Q.A.U. adjacent to its eastern boundary; that Section 49 of the 1960 Ordinance empowers C.D.A. to exchange land; that initially Q.A.U. was planned to be in the National Park area but in the 1960s the Master Plan was amended to relocate Q.A.U. from the National Park area to its present location; that the construction of the B.K.B. Road entails no alteration in the Master Plan; that paragraph 9.61 of the Master Plan document permits the construction of roads in the National Park; that section 21(3) of the Islamabad Wildlife (Protection, Preservation, Conservation, and Management) Ordinance, 1979 ("the 1979 Ordinance") permits the construction of access roads etc. in the National Park; that C.D.A. is constructing the entire B.K.B. Road over land specifically acquired years ago for the purpose of constructing a road; that no new acquisition is being carried out by C.D.A. to construct the B.K.B. Road and not a single dwelling would be demolished in the construction process; that till date, a lease agreement has not been executed between C.D.A. and Q.A.U. with respect to 1709 acres, 04 kanals and 12 marlas of land; that C.D.A. is not vested with the statutory authority to exempt Q.A.U. from paying annual ground rent or to extend the validity of the period for which the allotment was made without payment of any consideration; that if Q.A.U. files an application for the removal of encroachments on its land, the same shall be dealt with in accordance with the law; and that now that P.E.P.A. has granted an approval to the E.I.A. report submitted by C.D.A., there is no reason why C.D.A. should be restrained from resuming the construction work. Learned counsel for C.D.A. prayed for all the writ petitions to be dismissed.

36. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the writ petitions have been set out in sufficient detail in paragraphs 5 to 30 above and need not be recapitulated.

37. I propose in the first instance to deal with the issue regarding the commencement of the construction work on the B.K.B. Road prior to P.E.P.A.'s approval of the E.I.A. report. Before dealing with this issue, it is necessary to give a conspectus of the relevant provisions of the 1997 Act which prohibit the execution of works

without having obtained an approval of the E.I.A. report from P.E.P.A. and the provisions that provide consequences for failure to show compliance with the said requirements.

RELEVANT PROVISIONS OF 1997 ACT and REGULATIONS MADE THEREUNDER:-

38. The 1997 Act was enacted with the avowed purpose of protection, conservation, rehabilitation, and improvement of the environment, prevention and control of pollution, promotion of sustainable development, and for matters connected therewith and incidental thereto. "Environmental Impact Assessment" is defined in section 2(xi) of the said Act to mean an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed.

39. Where a project is likely to cause an adverse environmental effect, section 12(1) of the 1997 Act prevents the proponent of the project from commencing construction or operation unless he has filed with P.E.P.A. an initial environmental examination and has obtained its approval. For the purposes of clarity, section 12(1) is reproduced hereinbelow:-

"12. Initial environmental examination and environmental impact assessment.---(1) No proponent of a project shall commence construction or operation unless he has filed with the Federal Agency an initial environmental examination or, where the project is likely to cause an adverse environmental effect an environmental impact assessment, and has obtained from the Federal Agency approval in respect thereof."

40. Section 17(1) of the 1997 Act provides inter alia that whoever contravenes or fails to comply with the provisions of section 12 or any order issued thereunder shall be punishable with fine which may extend to Rs.1 million and in case of a continuing contravention or failure, with an additional fine which may extend to Rs.100,000/- for every day during which such contravention or failure continues.

41. Section 19 of the 1997 Act captioned "Offences by Government Agencies, local authorities or local councils" provides that where any contravention of the 1997 Act has been committed by any Government Agency, Local Authority or Local Council, and it is proved that such contravention has been committed with the consent or connivance of, or is attributable to any negligence on the part of the Head or any other officer of the Government Agency, Local Authority or Local Council, such Head or other officer shall be deemed guilty of such contravention along with the Government Agency, Local Authority, or Local Council and shall be liable to be proceeded against and punished accordingly.

42. Section 20 of the 1997 Act provides for the establishment of Environmental Tribunals whereas the manner in which such Tribunals are to exercise jurisdiction is provided for in Section 21. Section 21(1) provides that an Environmental Tribunal shall exercise such powers and perform such functions as are, or may be, conferred upon or assigned to it by or under the said Act or the Rules or the Regulations made thereunder. Section 21(2) provides that all contravention punishable under Section 17(1) shall be exclusively triable by an Environmental Tribunal. Section 21(3) provides that an Environmental Tribunal shall not take cognizance of any offence triable under section 21(2) except on a complaint in writing by (a) P.E.P.A. or any Government agency or local council; and (b) any aggrieved person who has given notice of not less than thirty days to P.E.P.A. or the Provincial Agency concerned of the alleged contravention and of his intention to make a complaint to the Environmental Tribunal.

43. In exercise of the powers conferred by section 33 of the 1997 Act, P.E.P.A., with the approval of the Federal Government, made the 2000 Regulations. Regulation 4 of the 2000 Regulations provides that a proponent of a project falling in any category listed in Schedule-II shall file an E.I.A. with P.E.P.A. and the provisions of section 12 of the 1997 Act shall apply to such project. Entry No.2 in paragraph D of Schedule-II to the 2000 Regulations is "Federal or Provincial highways or major roads (except maintenance, rebuilding or reconstruction of existing roads) with total cost of Rs.50 million and above."

PROCESS FOR APPROVAL OF E.I.A. UNDER SECTION 12 OF THE 1997 ACT FOR THE B.K.B. ROAD:-

44. C.D.A., being cognizant that the project for the construction of the B.K.B Road was likely to cause an adverse environmental effect, and also being well aware of the requirements of section 12 of the 1997 Act read with Regulation 4 of the 2000 Regulations, applied on 05.09.2022 to P.E.P.A. for the approval of the E.I.A. with respect to the said project. It is an admitted position that without waiting for the approval of the E.I.A. by P.E.P.A. in terms of section 12 of the 1997 Act, C.D.A., being the proponent of the said project, issued an order dated 05.10.2022 for the commencement of the works to the contractor/National Logistics Cell ("N.L.C."). It was not denied by C.D.A. that works had commenced and several trees were felled prior to the approval of the E.I.A.

45. Apparently, the Prime Minister had inaugurated the construction of the B.K.B. Road on 30.09.2022, but as mentioned above the construction work had begun well before this. The ad interim injunction dated 18.10.2022 issued by this Court was only with respect to the construction activity undertaken within the boundary of Q.A.U. It is an admitted position that C.D.A. and its contractor continued with construction on the B.K.B. Road albeit outside the boundary of Q.A.U. All this was being done prior to the approval of the E.I.A. Had this Court not issued an injunction,

C.D.A. and its contractor would have continued with the construction work within the boundary of Q.A.U. I say this because the learned counsel for C.D.A. resisted the issuance of the injunction and once issued had strived to have it vacated.

46. It may well have been the desire of the Prime Minister for the construction of the B.K.B. Road to have been completed at the earliest but it was the obligation of the officials serving in C.D.A. and N.L.C., all of whom are public functionaries or in the service of Pakistan, to have made it known to him that obtaining the approval of the E.I.A. in terms of section 12(1) of the 1997 Act was mandatory and that the commencement of the construction work prior to an approval of the E.I.A. by P.E.P.A. was an illegality.

47. Section 12(1) of the 1997 Act is worded in negative and prohibitory terms. It opens with the words "no proponent of a project shall commence construction or operation." The strong language in which section 12(1) is worded is indicative of legislative command that construction work shall not be carried out on a project which is likely to cause an adverse environmental effect prior to the approval of the E.I.A. When statutory conditions are couched in negative terms they are almost invariably held to be mandatory. Negative words compel an imperative construction. The whole aim and object of the legislature would be plainly defeated if the command to do the thing in the particular manner is not obeyed. Whenever the intent of a statute is mandatory, it is clothed with a negative command. Section 12 of the 1997 Act couched in negative terms is a mandatory provision and an act, as in this case in disobedience of the same, cannot be countenanced. In holding so, reliance is placed on the following case law:-

(i) In the case of Atta Muhammad Qureshi v. Settlement Commissioner (PLD 1971 SC 61), the Supreme Court held as follows:-

"It is not possible to lay down a general rule of universal application in this behalf, but the one which is suggested be reported authorities in this connection is the affirmative or negative character of the language in which the provision is couched. If it is negative, that is to say, if the statute enacts that certain action shall be taken in a certain manner and in no other manner, it has been held that the requirements are absolute and that neglect to attend them will invalidate the whole procedure. If, on the other hand, the language is affirmative, it may be considered as a directory provision."

(ii) In the case of Chaudhry Shujat Hussain v. The State (1995 SCMR 1249), it was held as follows:-

"8. .. It is well-settled principle of interpretation of statute that where any provision couched in negative language requires an act to be done in a particular manner then it should be done in the manner as required by the statute otherwise such act will be illegal."

(iii) In the case of Saadat Khiyali v. City Coordination Officer (PLD 2005 Lahore 190), it was held as follows:-

"10. A provision of law expressed in the negative terms is generally to be considered as mandatory unless the intention of the legislature appears to the contrary."

(iv) This Hon'ble Court has also dilated upon the interpretation of a provision couched in negative / prohibitory language, in the case of National Institutional Facilitation Technologies (Pvt.) Limited v. Federal Board of Revenue and others (PLD 2020 Islamabad 378), in the following terms:-

"78. The use of the negative words in Rule 31(1) of the P.P.R. viz "no bidder shall be allowed to alter or modify his bid after the bids have been opened" plainly make the requirements of the said Rule imperative. It is a settled principle of interpretation that when a statute is couched in negative language, it is all the more mandatory and peremptory. Reference in this regard may be made to the law laid down in the cases of Shujat Hussain v. The State (1995 SCMR 1249), Allied Bank of Pakistan v. Khalid Farooq (1991 SCMR 599), Mukhtar Hussain Shah v. Wasim Sajjad (PLD 1986 SC 178), Atta Muhammad Qureshi v. Settlement Commissioner (PLD 1971 SC 61), Muhammad Hanif v. Karachi Building Control Authority (2007 CLC 315), Muhammad Khalid v. K.A.S.B. Bank Ltd. (2007 CLD 232), Tariq Irshad v. The State (PLD 2006 Karachi 25), Haji Sheikh Noor Din v. Muhammad Intizar (2006 PLC 606), Saadat Khiyali v. City Coordination Officer (PLD 2005 Lahore 190) and Inder Lal v. The State (1996 MLD 464)."

48. It is, however, no longer res integra that the requirement in section 12(1) of the 1997 Act to obtain an approval of an E.I.A. from P.E.P.A. is mandatory. In the case of Imrana Tiwana v. Lahore Development Authority (PLD 2015 Lahore 522), a petition in the nature of pro bono publico was filed before the Hon'ble Lahore High Court calling in question the execution of the Signal Free Corridor Project from Qartaba Roundabout to Liberty Market Roundabout. Paragraph 38 of the said report shows that the proponent of the said project had commenced construction work without obtaining the approval of the E.I.A. In the said case, interim relief regarding the execution of the works was granted by the Hon'ble High Court for the reason that works had been commenced prior to the approval of the E.I.A. After referring to section 12 of the Punjab Environmental Protection Act, 1997, which unambiguously states that a project cannot commence without an approval of the E.I.A., the Hon'ble High Court held inter alia that the Environmental Protection Agency had failed to take action against the proponent of the project for unlawfully allowing the construction to continue without obtaining the approval of the E.I.A. Additionally, in the case of Muhammad Shahid v. Punjab Environmental Tribunal (PLD 2018 Lahore 356), the Hon'ble Lahore High Court observed that the requirement in section 12 of the Punjab Environmental Protection Act, 1997, which

is in pari materia to Section 12 of the 1997 Act, being mandatory in nature, cannot be avoided.

49. It would not be out of place to refer to the judgment by the Environmental Tribunal Punjab in the case of Sumaira Awan v. Government of Pakistan (2008 CLD 1185), where the proponent of the Mall-Canal Crossing Underpass had commenced construction without an approval of the E.I.A. by the Provincial Environmental Protection Agency. The Environmental Tribunal Punjab held inter alia that the requirements of section 12 of the 1997 Act were obligatory in nature and that the proponent of the project and the contractor could not be absolved from liability by executing the project without approval of the E.I.A. Furthermore, it was held as follows:-

"22. With regard to objection raised by respondents Nos.4 and 5 (the contractor) pertaining to his alleged no liability for obtaining NOC under section 12 PEPA, 1997, it is observed that no one can absolve on his own from the liability of executing an unlawful work/project on the plea that the contract awarding Agency was primarily obliged to comply with the provisions of law. Every executant of an unlawful work is considered equally responsible for the penalty as a co-offender as the original proponent of that unlawful work is considered as an offender. An unlawful work to be accomplished by third party cannot be considered lawful for him either on the basis of absence of knowledge about law or any legal flaw in the assigned work to him by his master/contract assignee authority."

50. Politicians are not expected to be well-versed with the niceties of law. This places a corresponding obligation on civil servants/public functionaries to make the requirements of law well known to them. This is moreso when compliance with a direction issued by a Prime Minister would entail violation of the law. For instance in the case at hand, was it not obligatory on the officials in C.D.A. as well as the contractor, both being public sector organizations manned by officials in the service of Pakistan, to have explicitly informed the Prime Minister that his direction to complete the B.K.B. Road within a certain time span was not possible as an E.I.A. approval had not been obtained from P.E.P.A.? Silence on the part of the officials in C.D.A. and the contractor is nothing but pure dereliction of duty. Reference in this regard may be made to the following case laws:-

(i) In the case of Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), it was held as follows:-

"We need not stress here that a tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed as Incharge of administrative departments of Government are not expected to carry with them a deep insight in the complexities of administration. The

duty of a bureaucrat, therefore, is to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in accordance with the law. Succumbing to each and every order of direction of such elected functionaries without bringing to their notice, the legal infirmities in such orders/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. A Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-compliance would have exposed the concerned Government servant to the risk of disciplinary action."

(ii) In the case of Province of Punjab v. Muhammad Afzal (2004 SCMR 49), it was held as follows:-

"The bureaucracy should be courageous enough to disobey illegal orders irrespective of the fact who is who including politicians/MNAs/MPAs having no authority to pass such order or give such arbitrary directions so that no illegal appointment could be made in oblivion of law and under political influence or for any other extraneous considerations."

(iii) In the case of Muhammad Akhtar Shirani v. Punjab Text Book Board (2004 SCMR 1077), it was held as follows:-

"7. We have noted with pain that departmental authorities responsible to run its affairs do submit to whims and wishes of their superiors and never feel hesitation in implementing even an illegal order, knowing well that it has no legal sanction and if such order is implemented it is bound to give rise to a number of complications in the future. This Court time and again has emphasized that the departmental functionaries are only obliged to carry out lawful orders oil their superiors and if they are being pressurized to implement an illegal order they should have put on record their dissenting note and if such practice is followed chances of issuing/passing illegal orders shall be minimized."

(iv) In the case reported as PLD 2005 SC 873 (Reference No.2 of 2005 by the President of Pakistan), a nine-member bench of the Hon'ble Supreme Court held that "a Government functionary is bound to obey and carry out only lawful orders and acts and is not bound to become a party to the acts, which are not in accordance with law."

(v) In the case of Secretary, Education, N.-W.F.P v. Mustamir Khan (2005 SCMR 17), it was held that a public functionary cannot be punished merely for the reason that he had refused to act illegally rather his moral courage should be appreciated.

(vi) In the case of Muhammad Akram v. Member, Board of Revenue (2007 SCMR 289), it was held that "[i]t is the duty and obligation of the public functionaries to act in accordance with the law in view of Article 4 of the Constitution."

(vii) In Human Rights Cases Nos. 4668 of 2006, 1111 of 2017 and 15283-G of 2010 (PLD 2010 SC 759), the Hon'ble Supreme Court emphasized that "departmental functionaries are only obliged to carry out lawful orders of their superiors and if they are being pressurized to implement an illegal order, they should have put on record their dissenting note."

(viii) Furthermore, the Hon'ble Supreme Court of Pakistan in the case of Government of Pakistan v. Farheen Rashid (2011 SCMR 1) has also held as follows:-

"It is the duty and obligation of the public functionaries to act within the four corners of the mandate of the Constitution and Law. Even the Chief Executive of the Country is not above the Constitution and is bound to obey the command of the Constitution as envisaged under Article 5(2) of the Constitution and law laid down by the Court in various pronouncements."

(ix) The remarks of the Hon'ble Supreme Court of Pakistan in the case of Watan Party v. Federation of Pakistan (PLD 2011 SC 997) are also instructive:-

"At this juncture, reference to Article 5 of the Constitution is relevant and appropriate, which commands that loyalty to State is the basic duty of every citizen and obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be, and of every other person for the time being within Pakistan. Thus, the Executive/public functionaries are bound to enforce the Constitution while protecting the Fundamental Rights of the citizens without any fear or favour or compromise for subjective purpose."

Law to the said effect is also laid down in the cases of Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), Yaqoob Shah v. XEN PESCO (PLD 2002 SC 667), Ramesh M. Udeshi v. The State (2005 SCMR 648) and Ghulam Sakina v. Member Board of Revenue (PLD 2004 Karachi 391).

51. The execution of works prior to the approval of an E.I.A. exposed C.D.A. to the imposition of a penalty under Section 17(1) of the 1997 Act. P.E.P.A. issued a notice dated 20.10.2022 to C.D.A. calling upon the latter to show cause as to why an administrative penalty in the amount of Rs.1 million "and for each day the contravention continues" should not be imposed on C.D.A. under section 17(7) of the 1997 Act for contravening Section 12 of the said Act. In the said notice, it is also mentioned that if C.D.A. pays the administrative penalty, it will not be charged with an offence under the 1997 Act. The issuance of the said show cause notice implies that C.D.A. had commenced the construction works prior to its formal inauguration

by the Prime Minister on 30.09.2022. The effect of the interim order issued by this Court on 18.10.2022 was that construction work only within the boundary of Q.A.U. was stopped. But it is an admitted position that the construction work continued unabated despite the receipt by C.D.A. of the said show cause notice. Hence, this was "a case of a continuing contravention or failure" for which P.E.P.A. was obliged to impose "an additional fine which [could] extend to Rs.100,000/- for every day during which such contravention or failure continued."

52. A penalty to the tune of Rs.1 million has been imposed by P.E.P.A. on C.D.A. through order dated 15.11.2022 for having commenced construction without the E.I.A. having been approved in terms of section 12(1) of the 1997 Act. Now P.E.P.A., while imposing the said penalty, decided not to impose an additional fine of Rs.1,00,000/- for every day during which the contravention or failure (i.e. carrying out construction works prior to the approval of the E.I.A.) continued after the issuance of the show cause notice. The said order dated 15.11.2022 is silent as to the reasons why the additional fine was not imposed. Even during the hearing no plausible reason was put forth by P.E.P.A. for not imposing a penalty of Rs.100,000/- on C.D.A. for every day that it contravened section 12(1) of the 1997 Act. Had C.D.A. stopped the construction work immediately on receipt of the show cause notice, the imposition of the administrative penalty to the tune of Rs.1 million would have been plausible. In the face of the continued defiance by C.D.A. of the requirements of section 12 of the 1997 Act, I am of the view that P.E.P.A. failed to exercise the jurisdiction vested in it by issuing order dated 15.11.2022 whereby it confined itself to imposing a fine of only Rs.1 million on C.D.A. This omission on the part of P.E.P.A., to me, casts a doubt on its ability to regulate or admonish statutory bodies that violate the provisions of the 1997 Act.

53. The total project cost of the B.K.B. Road is Rs.6,515 million. The imposition of a penalty for a paltry sum of Rs.10,00,000/- is an impetus for proponents of mega projects to violate with impunity the mandatory requirement in section 12(1) of the 1997 Act as they would know that the toothless regulator would let them off by requiring them to pay a meager amount.

54. P.E.P.A. not only opted not to make C.D.A. and/or the contractor liable for the additional fine envisaged by section 17(1) of the 1997 Act but also chose not to submit a complaint in writing to the Environmental Tribunal under section 21(3) of the said Act. At this stage, it is appropriate to mention that in the case of Lahore Development Authority v. Imrana Tiwana (2015 SCMR 1739), it was held inter alia that an Environmental Protection Agency must act fairly and free from governmental interference and must also record prudent reasons for both granting or refusing an E.I.A. It was also held that the duty to record reasons was mandatory and where no reasons are recorded, the Court would be justified in concluding

that no good reasons exist and would render the administrative or regulatory order void.

55. Since the Environmental Tribunal cannot take cognizance of any offence except on a complaint in writing by P.E.P.A. or any Government Agency or Local Council or any aggrieved person, the inaction on the part of P.E.P.A. to submit a complaint to the Environmental Tribunal against C.D.A. and/or the contractor for contravening the requirements of section 12(1) not just deserves condemnation in the strongest terms but would also negate the contention made on behalf of C.D.A. that this Court cannot take cognizance of such contravention due to the alternative remedy provided by section 21. The abdication of powers by P.E.P.A. by not submitting a complaint against the delinquent officials of C.D.A. and/or the contractor to the Environmental Tribunal cannot operate as a fetter on the Constitutional jurisdiction of this Court in taking notice of such contravention. Given the omission on the part of P.E.P.A. to submit a complaint under section 21(3) of the 1997 Act to the Environmental Tribunal with respect to the contravention by C.D.A. of the requirements of section 12(1) of the said Act, the contention of the learned counsel for C.D.A. that this Court ought not to delve into such contravention as there was an alternative forum provided by law to deal with such contraventions, is rendered devoid of force.

56. The E.I.A.'s report submitted by C.D.A. on 05.09.2022 was approved by P.E.P.A. on 24.11.2022. The conditions on which the said approval is granted do not specifically refer to the project in question. These are standardized conditions and it appears that P.E.P.A. is issuing approvals to different projects on the same conditions. I say so because P.E.P.A. had issued an undated approval of the E.I.A. for the "Construction of 4 Lane Flyover at Bhara Kahu N-75 (3.5 Km), Islamabad" on similar conditions on which the E.I.A. was issued for the B.K.B. Road. The approval of the E.I.A. is, in my view, totally devoid of reasons. In issuing the approval, P.E.P.A. appears to have been oblivious of the dictum in the case of Imrana Tiwana v. Lahore Development Authority (PLD 2015 Lahore 522) wherein the Hon'ble Lahore High Court enunciated the manner in which an Environmental Protection Agency is to accord approval to an E.I.A. In this regard, paragraph 46 of the said case is reproduced herein below:-

46. The decision of the EPA must be communicated to the proponent in the form prescribed in Schedule VI of the Regulations. This does not mean that the EPA is relieved from passing a speaking order after considering all the material as described in Regulation 11(4). EPA is bound to pass a speaking order and the reasons must be clearly specified in item No. 5(a) of the said Schedule. These reasons shall also be retained in the EIA register under section 12(7) of the Act. Anything short of a speaking order offends Articles 4 and 10A of the Constitution.

57. Section 19 of the 1997 Act makes the head or any other officer of a government agency, local authority or local council to be considered guilty of a contravention of a provision of the said Act committed by such government agency, local authority or local council. In the case at hand, it is an admitted position that C.D.A., being the proponent of the B.K.B. Road and its contractor, fall within the meaning of "Government Agency" as defined in section 2(xvii) of the 1997 Act. The execution of the works and the felling of the trees prior to the approval of the E.I.A. is not disputed. Such construction and the felling of trees prior to the approval of an E.I.A. is a clear contravention of the mandatory requirements of section 12 of the 1997 Act exposing the officers responsible for such contravention to be proceeded against and

punished in terms of section 19 of the said Act. P.E.P.A. chose to ignore the mandate of section 19 while imposing a penalty of Rs.10,00,000/- on C.D.A. for contravening the requirements of section 12(1). In the case of Zeenat Salim v. Pakistan Naval Farms (PLD 2022 Islamabad 138), the Sailing Club in Rawal Lake at Islamabad had been constructed by the Pakistan Navy without having obtained an approval of an E.I.A. by P.E.P.A. This Court held that for the violation of section 12 of the 1997 Act, the Chief of the Naval Staff had exposed himself to criminal proceedings under section 19 of the said Act.

58. The commencement of the construction work by C.D.A. and/or its contractor prior to the approval of the E.I.A. was grossly illegal and also a culpable offence under the 1997 Act. The learned counsel for C.D.A. did not think much about C.D.A. and/or its contractor commencing works without obtaining an approval of the E.I.A. and thereby contravening the requirements of section 12 of the 1997 Act and took the position that in terms of section 17(6) of the 1997 Act, the offence committed by C.D.A. was compoundable. For the purposes of clarity, subsections (6), (7) and (8) of section 17 of the 1997 Act are reproduced herein below:-

"(6) The Director-General of the Federal Agency or of a Provincial Agency or an officer generally or specially authorized by him in this behalf may, on the application of the accused compound an offence under this Act with the permission of the Environmental Tribunal or Environmental Magistrate in accordance with such procedure as may be prescribed.

(7) Where the Director-General of the Federal Agency or of a Provincial Agency is of the opinion that a person has contravened any provision of this Act, he may, subject to the rules, by notice in writing to that person require him to pay to the Federal Agency or, as the case may be, Provincial Agency an administrative penalty in the amount set out in the notice for each day the contravention continues; and a person who pays an administrative penalty for a contravention shall not be charged under this Act with an offence in respect of such contravention.

(8) The provisions of subsections (6) and (7) shall not apply to a person who has been previously convicted of offence or who has compounded an offence under this Act or who has paid an administrative penalty for a contravention of any provision of this Act."

59. To begin with, the said contention made on behalf of C.D.A. smacks of bigotry and highhandedness. It is unfortunate for a statutory body to downplay the contravention of a mandatory provision of the 1997 Act by asserting that the contravention was compoundable. Indeed, section 17(6) empowers the Director General, P.E.P.A. or an officer authorized by him to compound an offence under the said Act with the permission of the Environmental Tribunal or Environmental Magistrate, but such power can only be exercised on an application of the accused for compounding the offence. There is nothing on the record to show that C.D.A. had applied to the Director General, P.E.P.A. for compounding the contravention of the requirements of section 12(1) of the 1997 Act. Where the Director General, P.E.P.A. forms an opinion that a person had contravened any provision of the 1997 Act, section 17(7) empowers the Director General, P.E.P.A. to require that person to pay an administrative penalty in the amount set out in the notice "for each day the contravention continues." A person who pays the administrative penalty for a contravention is insulated from being charged with an offence in respect of the contravention. In the instant case, the undue favour extended by P.E.P.A. to C.D.A. was that it omitted to set an amount in its order dated 15.11.2022 for each day that C.D.A. contravened section 12(1) of the 1997 Act.

60. The Provincial Assembly of Punjab has, through the Punjab Environmental Protection (Amendment) Act, 2012, amended section 17 by raising the maximum limit of the fine from Rs.1 million to Rs.5 million. The Provincial Assemblies of Khyber Pakhtunkhwa and Sindh, through legislation in 2014, have also enhanced the said limit to Rs.5 million. Alas in Islamabad, the maximum fine that can be imposed under section 17 continues to be Rs.1 million. It is essential for the quantum of a fine to be a deterrent for the wrongdoers and therefore it has to be in the amount which is commensurate to the economic realities of the present day. The rupee has lost its value several times over from the date when the 1997 Act was enacted. An amendment in section 17 of the said Act is therefore imperative. For this purpose, I deem it appropriate to direct for the matter to be placed before the Law and Justice Division to consider proposing necessary amendments in section 17 to the Federal Legislature.

61. This Court cannot ascribe to itself the role of P.E.P.A. by referring the matter regarding the contravention by C.D.A. of section 12 of the 1997 Act to the Environmental Tribunal. However, section 2(2) of the Establishment of the Office of Wafaqi Mohtasib Order, 1983 ("the 1983 Order") defines "maladministration" to include a decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations or is a departure from

established practice or procedure, unless it is bona fide and for valid reasons. The continuation of the construction activity by C.D.A. and/or the contractor without having obtained an approval of the E.I.A. is a clear violation of the law i.e., section 12 of the 1997 Act. Since the construction activity continued despite the issuance of show cause notice dated 20.10.2022 by P.E.P.A., the continuation of such activity cannot be termed as bona fide. P.E.P.A. had adequately put C.D.A. to notice that the continuation of the construction activity was a contravention of section 12 of the 1997 Act.

62. Now section 9 of the 1983 Order empowers the Wafaqi Mohtasib (Ombudsman) to undertake any investigation into any allegation of maladministration on the part of any Agency or any of its officers or employees on a motion of the High Court made during the course of any proceedings before it. "Agency" as defined in section 2(1) of the 1983 Order includes a statutory body like C.D.A. It would be most unjust if this Court were to shut its eyes to the brazen violation by C.D.A. of the mandatory requirements of section 12 of the 1997 Act. Given the fact that from the date of the issuance of show cause notice dated 20.10.2022 until the approval of the E.I.A. by P.E.P.A., C.D.A. continued with the construction activity and thereby contravened the mandatory requirements of section 12 of the 1997 Act, this Court is referring the maladministration committed by the officials of C.D.A. to the Wafaqi Mohtasib for investigation and proceedings in accordance with the law. The Office is directed to transmit a copy of this judgment to the Wafaqi Mohtasib (Ombudsman).

WHETHER THIS COURT OUGHT TO DIRECT C.D.A. TO ACCEPT Q.A.U.'s DEMANDS FOR ALLOWING CONSTRUCTION OF THE B.K.B.ROAD ON ITS LAND:-

63. The minutes of the Q.A.U. Syndicate's meeting dated 12.10.2022 show that the Syndicate had resolved to conditionally approve the B.K.B. Road on Q.A.U.'s land. Final approval was to be given after taking into consideration the recommendations of the joint working group constituted by Q.A.U.'s Syndicate. Subsequently the Syndicate, in its meeting dated 21.10.2022, by majority resolved to accord approval for the construction of the B.K.B. Road through Q.A.U.'s land if C.D.A. fulfilled the "assurances" listed in "Schedule-A" hereto. I have gone through the list of the demands made by Q.A.U., none of which demonstrate a principled stand by Q.A.U. to oppose the construction of the road on its land. For instance, Q.A.U. wanted C.D.A. to extend its lease for a period of 33 years free of charge and have encroachments on its land removed. Another demand was that C.D.A. should allow Q.A.U. to use a certain portion of its land for mixed use such as the construction of Community Centre, Petrol Pump, Residential Complex, Education City, etc. Learned counsel for Q.A.U. took an unequivocal position that if C.D.A. were to give an assurance of accepting Q.A.U.'s demands listed in the minutes of Q.A.U.'s Syndicate's meeting dated 21.10.2022, Q.A.U. would not object to the construction of the B.K.B. Road on its land. Q.A.U. was inclined on a quid pro quo with

C.D.A. rather than opposing the construction of the said road on its land as a matter of principle.

64. C.D.A., being a creature of a statute, its powers and functions are circumscribed by the 1960 Ordinance and the rules and regulations made thereunder. Indeed, it is C.D.A.'s statutory obligation to remove all encroachments on the land allotted to Q.A.U. and to consider Q.A.U.'s application for extension of lease strictly in accordance with the law. Q.A.U.'s demand for the construction of further buildings on the land allotted to it can also be only in accordance with the applicable building regulations. Q.A.U.'s demand for the allotment of 225 kanals free from all encroachments and encumbrances towards the eastern boundary of Q.A.U. as compensation for Q.A.U.'s land which is to come under the B.K.B. Road has already been accepted by C.D.A. It is not for this Court to determine the adequacy of the compensation. For Q.A.U. to insist upon C.D.A. to agree to those demands which are not within its jurisdictional domain is unreasonable. It goes without saying that the construction of the B.K.B. Road shall be carried out in a manner that free and uninterrupted access of the faculty, students and staff to Q.A.U. and the process of imparting education is not impeded or interrupted in any manner.

WHETHER THE ALIGNMENT OF THE B.K.B.ROAD IS IN THE NATIONAL PARK:-

65. Much stress was laid by the learned counsel for the petitioners that the B.K.B. Road has been constructed through the National Park and rigorous construction activity cannot be permitted to be carried out in such area in violation of the provisions of the 1979 Ordinance.

66. Learned counsel for the petitioners in Writ Petition No.3916/ 2022 had asserted that the construction of the B.K.B. Road was not lawful as it was being carried out in the National Park by violating the Master Plan of Islamabad. He brought on record the master plan documents to show that instead of the Margalla Road joining the Murree Road at Village Malpur, a kink in the road was made causing it to go through the land owned by Q.A.U. It was not denied that the construction of the B.K.B. Road was in the public interest yet the petitioners did not come with any alternative suggestion to address the woes of commuters on Murree Road. In other words, the petitioners. stance was that the Margalla Road should run along with the boundary of Q.A.U. and join Murree Road even though this would exacerbate the volume of traffic going through village Bhara Kahu.

67. Paragraph 957 of the Master Plan for the Metropolitan Area provides inter alia that a National University is to be built within the National Park area. The map of the Master Plan of Islamabad originally issued by C.D.A. was brought on record through an application (C.M.No.4497/2022) which shows the National Park to be to the south of the present Srinagar Highway and Murree Road. It

is not disputed that at some point in time in 1960, the location of the National University was changed to the north of Murree Road. The documents on the record do not enable me to definitely hold that the present location of Q.A.U. is in the National Park but even if it were to be so, paragraph 961 of the Master Plan for the Metropolitan Area permits the construction of roads in the National Park. Additionally, Section 21(3) of the 1979 Ordinance also permits the construction of access roads in the National Park.

WHETHER THIS COURT SHOULD ISSUE A WRIT TO UNDO THE CONSTRUCITON CARRIED OUT THUS FAR:-

68. The present scenario is that even though the construction activity that had been carried out on the B.K.B. Road up to 24.11.2022 (when P.E.P.A. approved the E.I.A.) was in violation of section 12 of the 1997 Act, the report submitted by the Deputy Director, Roads Division-II, C.D.A. shows that the construction work was started on 11.10.2022 and out of the project cost of Rs.1653.277 million, the expenditure incurred so far was Rs.1,653.277 million. The payment that was in the process of being made to the contractor for work done was Rs.1,645 million leaving a balance of Rs.3,216.723 million. A total manpower of 1,017 managers, engineers, staff, and labour are deployed at the site and 32% of the works have been completed. It is well settled that the exercise of jurisdiction under Article 199 of the Constitution is purely discretionary. Seldom can a petitioner ask for it as of right. Writs are not issued as a matter of course. While deciding a writ petition, this Court can see which way justice lies. This Court is not obliged or bound to interfere in writ jurisdiction in every case where the order of the authorities may be unlawful. In equitable jurisdiction, it is the duty of the Court to preserve public good. This Court, in its discretionary jurisdiction, would only exercise judicial discretion in favour of or against the authorities according to the facts and circumstances of each case. In the instant case, an order to further restrain C.D.A. from proceeding with the construction work or to undo the construction work carried out prior to the approval of the E.I.A. would result in injustice to the society. In the instant matter, the petitioners do not take the position that the construction of the B.K.B. Road is not for a public purpose. Given the progress of the works on a project which is in the public interest, this Court is not inclined to issue a writ. In holding so, reliance is placed on the following case law:-

(i) In Suo Motu case No.25/2009 (In the matter of cutting of trees for canal widening project, Lahore) (2011 SCMR 1743), the Hon'ble Supreme Court observed that the green belt along both sides of the canal in Lahore was a public trust resource and could not be converted into private or any other use other than a public purpose. Furthermore, it was held that the widening of the road along the canal was a public purpose.

(ii) In the case of Lahore Conservation Society v. Chief Minister of Punjab (PLD 2011 Lahore 344), public interest litigants had called in

question the construction of Kalma Chowk Flyover Project at Lahore on the ground that certain rules and regulations had been violated in obtaining approvals and that the construction work would cause damage to plants and trees in the vicinity. The petition was dismissed by the Hon'ble Lahore High Court by holding as follows:-

Now the question is when a project has been launched for the welfare of the public can it be halted on the basis that some of its aspects would cause certain damage to the public at large. There is no doubt that for construction of such a huge Flyover, cutting of trees on both sides and demolishing of certain infrastructure already available on the site is sine qua non. However, it is equally true that while undertaking said exercise the unhealthy impact of such work can be minimized by adopting precautionary and safety measures. Not only in this country but all over the world at the time of construction of a road etc. certain discomforts are to be faced by the inhabitants. Further, there is no denying the fact that by cutting of the trees and plants, the beauty of the site is bound to go dim, however, the same can be reinvigorated by planting new trees etc. after completion of the project the present view of recently completed Shalamar Flyover and Underpass can be quoted as precedent. For better future, one has to lose something in the present. If the public at large would suffer some inconvenience during completion of the said project, the same would also be a blessing for them in future as they would get rid of undue traffic blockage and wastage of precious time while standing on traffic signals.

(iii) In the case of Muhammad Khan v. Federation of Pakistan (2012 CLC 101), the petitioner had challenged the change in the design of the Larkana Mohenjodaro Road to the extent it passed through land acquired from the petitioner. The Hon'ble High Court of Sindh dismissed the petition by holding as follows:-

"It goes without axiom that the concern of an individual cannot be paramount to the interest of general public and therefore, the interest of general public should reign over the interest of an individual. We are therefore of the view, for the most part, keeping in mind the fact that the Land has been acquired for public purpose and that germane Notification under section 4 of the Act has been issued when still the petition was pending to which admittedly objections before now had been preferred by the petitioner, which shall take their own course, this petition has lost its efficacy on this ground."

(iv) In the case of Muhammad Jahangir v. Government of Punjab (2000 MLD 1196), it was held that if a project or a scheme is actuated by laudable consideration of public welfare, and if it leads to general convenience of the public, and if it engenders commercial activity to the benefit of the public at large, and if its impact on the environment is considered to be positive then the project must have precedence over individual rights.

69. Section 12 of the 1960 Ordinance provides inter alia that C.D.A. may, pursuant to a master plan and master-programme, call upon a local body or agency operating in the specified area to prepare, in consultation with C.D.A., schemes in respect of matters ordinarily dealt with by such local body or agency and thereupon the local body or agency shall be responsible for the preparation of the schemes within a reasonable time. The schemes that C.D.A. may call upon a local body or agency to prepare may relate to transportation, communications, highways, roads, and streets. Section 12 deals with the schemes that C.D.A. may call upon a local body or agency to prepare whereas section 13 deals with the preparation of schemes by C.D.A. itself. Section 13 provides that C.D.A. may, pursuant to the master-programme, itself prepare, when it considers it desirable to do so in the public interest, schemes for specified area relating to matters enumerated in section 12(2) which includes transportation, communications, highways, roads, and streets.

70. Learned counsel for Q.A.U. had submitted that if the master-programme provided for the construction of the B.K.B. Road, C.D.A. should have required a local body or agency to prepare a scheme for such road and that C.D.A. could have itself prepared a scheme for the road only if it considered it to be desirable to do so in the public interest. He further submitted that the decision of C.D.A. Board dated 17.06.2022 does not show that it had been considered to be desirable and in the public interest for C.D.A. itself to have prepared a scheme for the construction of the B.K.B. Road. The decision dated 17.06.2022 taken by C.D.A. Board shows that after due deliberations, C.D.A. had approved the present alignment of the Margalla Road Phase-I and Phase-II. It cannot be asserted that the decision to construct the B.K.B. Road was not in the public interest. Learned counsel for Q.A.U. could not identify the local body or agency which according to him should have prepared the scheme for the said road. Now all schemes under sections 12 and 13 of the 1960 Ordinance are required to be prepared in such manner and form as the Federal Government may specify. This is explicitly provided in Section 14 of the 1960 Ordinance. Although there is nothing on the record to show that the scheme for the B.K.B. Road had been prepared in the manner and form specified by the Federal Government, but this Court vide order dated 04.11.2022 had referred the matter to the Federal Government to play the role of mediator in resolving the dispute between C.D.A. and Q.A.U. The Committee constituted by the Prime Minister after hearing the petitioners in Writ Petition No. 3916/2022, as well as the representatives of the Q.A.U. and C.D.A. submitted their recommendations to the Cabinet, including the recommendation for the B.K.B Road project to be executed as it was a project of public importance. The Committee had also recommended that C.D.A. should be directed to fulfill its obligations/commitments to Q.A.U. listed in the minutes of Q.A.U.'s Syndicate's meeting dated 21.10.2022. The said Committee's report and recommendations were placed before the Cabinet in its meeting dated 30.11.2022. The

Cabinet approved the recommendations of the said Committee. Given the details of the B.K.B. Road project contained in the Committee's report, the Cabinet would be deemed to be cognizant of all the implications and ramifications of the said project. Now that the Cabinet has approved the said project albeit after the commencement of construction, this Court cannot interfere with the same.

71. The documents brought on record by C.D.A. show that during the 1960s land had been acquired by C.D.A. for the construction of this road. Through application (C.M. No.4087/2022), C.D.A. brought on record documents showing that on 19.06.1962, 462 acres and 06 kanals of land had been acquired in Village Malpur for the construction of "Murree Highway." Documents showing the acquisition of land by C.D.A. in Villages Shah Pur and Kot Hathyal for the same purpose had also been brought on record. C.D.A. has assured this Court that the construction of the B.K.B. Road is to be carried out on land already acquired by C.D.A. and in this process, no building whether inside or outside the boundary of Q.A.U. is to be demolished. The counsel for the petitioners in Writ Petitions Nos. 3916/2022, 4077/2022, 4371/2022 and 4543/2022 did not controvert the assertion made by the learned counsel for C.D.A. that not a single building of Q.A.U. would be demolished or damaged due to the construction of the B.K.B. Road. Therefore, I am of the view that the right to education of the students at Q.A.U. is not being restricted or curtailed by the construction of the said road. Bearing all this in mind, this Court will not exercise its discretionary jurisdiction in stopping the construction activity.

72. As mentioned above, a public hearing pursuant to Regulation 10 of the 2000 Regulations was conducted by P.E.P.A. on 18.11.2022. This hearing was also attended by the petitioners in Writ Petition No.4371/ 2022 who are members of the teaching faculty in Q.A.U. They asserted that the public hearing conducted on 18.11.2022 was unlawful. Now, after the public hearing, P.E.P.A. issued an approval of the E.I.A. report submitted by C.D.A. on the B.K.B. Road. Against the said approval, the petitioners can prefer an appeal under section 22(1) of the 1997 Act to the Environmental Tribunal. Due to the availability of the alternative remedy provided by law the said writ petition is dismissed as not maintainable.

73. The above are the reasons for the short order dated 12.12.2022 whereby all the petitions were dismissed. These reasons are being issued on Saturday 31.12.2022. No costs.

74. Before parting with this judgment, I must mark my appreciation of the research and assistance rendered by Umar Farooq, Research Officer/Deputy Registrar and Barrister Muhammad Usama Rauf, Law Clerk assigned to my Court.

SCHEDULE-A

"1) The land allocated for Bharakahu Bypass will not be transferred to CDA and shall remain the property QAU hence the right of way shall also remain with QAU.

2) The letter of allotment for the promised 225 Kanals of land (free from all encroachments and encumbrances) towards eastern boundary will be issued within 24 hours of the confirmation of the minutes. The leveling and fencing of the said land will be done within three days.

3) The bypass shall pass under the current Shahdra road and a service road of 24 feet wide on either side of the bypass shall be built and a mini underpass will be given to QAU directly from Murree Road.

4) Construction of a new road stretching 600 meters linking main Murree Road to QAU, which will provide a dedicated main approach/entrance to QAU. The same road will be connected to the third avenue. The construction of the said road will be completed before the completion of the bypass project.

5) CDA Board will consider a dedicated "Green Line Route" from Bharakahu to QAU to Bari Imam and to the Secretariat Metro Station subject to feasibility. Additionally, a shuttle service will run from Bharakahu's main terminal to QAU. The students of QAU will be entitled for 50% discount on the "Green Line" and Metro.

6) On Ground Demarcation will be conducted in pursuance of the decision of the hon'ble Islamabad High Court and the shortfall of 152 Acres will be handed over to QAU within three months.

7) CDA will remove all encroachments on QAU's land subject to detailed information and maps shared by QAU, after the demarcation of the complete land.

8) Land lease of QAU for 33 years will be extended without any charges from the relevant forum.

9) MOFEPT will facilitate the waiver of the outstanding amount against the land lease, Annual Ground Rent and Property Tax of QAU from the federal cabinet.

10) One hostel for students will be constructed through the Higher Education Commission Pakistan's Umbrella Project.

11) Ministry of Education and Professional Training will facilitate the fund allocation for construction of academic block at QAU through PSDP.

12) The service road of QAU from the main barrier till botanical garden will be widened and recarpeted.

13) QAU will be allowed to use a certain portion of its land for mixed use i.e., (Community Centre, Petrol Pump, Residential Complex,

Education City etc). QAU will also be allowed to undertake the projects of Public Private Partnership.

14) QAU will submit its revised master plan and it will be approved by CDA within due course of time.

15) Environmental impact of the bypass project such as noise will be mitigated with all necessary measures.

16) One against 10 trees will be planted by CDA for a tree cut for construction purpose.

17) The Ministry of Education and Professional Training will facilitate resolution of financial needs of QAU. In this regards a bail out of 500 million for the university in consultation with HEC will be worked upon. Considering the fact that QAU is the only university in the top 500 universities of the world, a summary will be moved to the Hon'ble Prime Minister of Pakistan for a package of 5 billion for pension/endowment needs of the university.

18) MOFEPT will continue to monitor and implement all the decisions taken during Joint Working Group and approved by the Syndicate.

19) The Joint Working Group will remain intact and continue its working till all outstanding issues between QAU and CDA are resolved.

20) A tripartite agreement on a legal paper with all necessary formalities will be signed between QAU, CDA and MOFEPT so that all parties remain legally bind to all the commitments and assurances documented in the minutes of the Syndicate."

MH/7/Isl. Order accordingly.

Case:18 Citizens For Environment

2024 C L D 350

[Sindh Environmental Protection Tribunal]

Before Justice (R) Nisar Muhammad Shaikh, Chairman, Muhammad Arif Khan, Member (Legal) and Abdul Rauf Memon, Member (Technical)

CITIZENS FOR ENVIRONMENT through General Secretary---Appellant

Versus

DIRECTOR GENERAL, SINDH ENVIRONMENTAL PROTECTION AGENCY and 2 others---Respondents

Appeal No. 2 of 2021, decided on 14th November, 2023.

ORDER

NISAR MUHAMMAD SHAIKH, CHAIRMAN.---The Citizens for Environment, a registered society, through its General Secretary, has filed this appeal under section 27 of Sindh Environmental Protection Act, 2014 (the Act, 2014), impugning the order dated 12.11.2020 whereby respondent No. 1-Director General, Sindh Environmental Protection Agency (SEPA), accorded approval of Environmental Impact Assessment (EIA) to respondent No.2-Bank AL-Habib Limited (Proponent), for construction of its Corporate Headquarter Office Building (Project) consisting on basement 1-6 + ground + 12 floors having total area of 4256.20 square yards, situated at plot No.222 Dr. Daudpota Road, E.1 Lines, Karachi Cantonment Board, Karachi.

2. We have heard the arguments and perused relevant record as well as R&Ps/official file of SEPA (the Agency).

3. The respondent No.2, by raising a preliminary objection on this appeal to be time barred, in para 2 of its reply to memo of appeal, has sought dismissal of this appeal in the following manner:

"A) The appeal is time barred in terms of section 27 of the SEPA, 2014. The impugned approval is dated 12.11.2020, which accordingly was also published on the website of SEPA around the same time. Accordingly, the impugned order was communicated to all members of the public at such time. This appeal is accordingly barred by limitation. The plea of the appellant that the order was communicated to them on 27.01.2021 is misleading as it conceals the publication on the Agency's website. In the circumstances, such publication would suffice for communication of the impugned approval to the appellant and limitation would commence from said date in terms of section 27 of the SEPA, 2014.

B) It is respectfully submitted that in terms of section 27 of the Act of 2014, the delay in filing an appeal is not condonable."

Whereas the appellant, in para E of the Rejoinder, replied to the above as under:

"The contents of paras (A) and (B) of the preliminary objections are denied being misleading and incorrect. It is, at the outset, denied that uploading on website of SEPA is proper communication of the order. Without prejudice to above, it is categorically denied that the impugned approval was uploaded on the website around the same time the approval was granted. The approval was uploaded on SEPA website on 24.01.2021. Copy of the header check is enclosed here as Annex-A. Respondent 2 is put to strict proof."

The relevant section 27 of the Act, 2014 provides that any person aggrieved by any order of the Agency may prefer an appeal with the Tribunal within 30 days of the date of communication of impugned order to such person. But, without showing any specific date of such communication, the contesting respondent No.2 claims that the impugned order dated 12.11.2020 was published on the website of the Agency around the same time and was communicated to all members of public at such time. In this regard, the appellant has mentioned a particular date of 24.01.2021 when the approval was uploaded on Agency's website and this date is nowhere denied by concerned respondent No.1. Appellant has stated in para 4 of appeal to have had applied for certified copies of approval etc. on 25.01.2021. He has also filed a copy of such application dated 25.01.2021 as Annexure C-2 of the appeal. Thus, the plea of appellant is clear that impugned order dated 12.11.2020 was published on 24.01.2021 on the Agency's website and the copy of which, applied vide application dated 25.01.2021, was supplied to appellant on 02.02.2021 as is mentioned in para K of the grounds of appeal, and none of these dates is specifically denied by concerned respondent No.1 if the same is falsely shown by appellant nor it has been claimed anywhere if the Agency had supplied copy of impugned order to appellant on any other date prior to 02.02.2021. Learned counsel for respondent No.2 in support of the plea that this appeal is barred by time, has relied upon the authorities i.e 2009 SCMR 1435, 1975 SCMR 157 and 2011 SCMR 08. In the first reported case it was held that mere repetitions of representation would not by itself enlarge the prescribed period of limitation. In the second case it was found that the time requisite for obtaining copy of order within the meaning of section 12 of the Limitation Act, 1908 means only the interval between the date of application for supply of copy and the date when it is ready for delivery. While in third case it was observed that the question of limitation cannot be considered a technicality" simpliciter as it has got its own significance and would have substantial bearing on merits of the case and that the law of limitation must be followed strictly. It appears that the facts and circumstances of the cited cases are distinguishable to the case in hand. Thus, the present appeal filed by appellant on 02.03.2021

after the copy of impugned order was supplied to him on 02.02.2021, is well within prescribed time.

4. Learned counsel for appellant very much emphasized on the compliance of Regulation 9(2)(c) of Sindh Environmental Protection Agency (Review of IEE and EIA) Regulations, 2014 (the Regulations, 2014) which, according to him, mandatorily requires no objection certificates (NOCs) of relevant departments to be filed along with EIA study report but, he contended, respondent No.2 failed to obtain NOC from concerned department of Cultural Heritage and Antiquities though there are at least eight antiquities and heritage buildings within 200 feet radius of the project site, out of which two are very close and adjacent to project site and that section 22 of the Antiquities Act, 1975 (the Act, 1975) also requires NOC prior to construction within 200 feet of an immovable antiquity. He further contended that section 10(1) of Sindh Cultural Heritage (Preservation) Act, 1994 (the Act, 1994) also prohibits the construction near the protected heritage and by virtue of section 19, such Act has an overriding effect to any other law and this non-obstante clause which has been ignored by respondent No.1, clearly reflects the significance having been attached to the preservation of protected antiquities and heritage buildings etc. which are declared to be of architectural value and thus, the proposed project will badly affect the environment as defined in section 2(xii) of the Act, 2014 and therefore, the clearance from Antiquities and Heritage Department was mandatory before consideration of EIA report.

5. On the other hand, learned counsel for respondent No.2 argued that the scope of the Act, 2014 is to protect, conserve and improve the environment and this Act does not include within its scope the protection or regulation of heritage buildings which are governed by other legislation to be implemented by other Departments and that the Act, 1975 is not applicable in this matter as no building within 200 feet of project site has been declared as protected antiquity in terms of section 10 of such Act nor any notification of Federal Government has been produced in this regard by the appellant. He also contended that the Act, 1994 does not prevent construction within any radius of any building declared as protected under such Act and that the Act, 2014 requires EIA to ensure that there should be no construction having adverse effect on environment while the protection and regulation of antiquities and cultural heritage have no relevancy to environmental concerns so as to fall within the scope of the Act, 2014 nor the alleged non-compliance can be agitated before this Tribunal. He further argued that even otherwise, respondent No.2 would obtain all approvals as applicable in law as the condition No.7 of impugned EIA approval specifically provides for obtaining any other approval required under any law in force though there is no such requirement in the Act, 1994.

6. In rebuttal, learned counsel for appellant contended that the impugned approval accorded under the Act, 2014 exposes threat to cultural heritage and antiquities therefore the Act, 1975 and also the Act, 1994 are very much applicable to this matter but

respondent No.2 has confined definition of Environment which is against the spirit of the Act, 2014 and that the condition No.7 of impugned approval is in contravention to Regulation 9(2)(c) of the Regulations, 2014 which mandatorily requires to make part of EIA report all NOCs of relevant departments therefore respondent No.2 cannot take refuge under such a condition which by itself is contrary to law. He also contended that the protection of antiquities and heritage buildings is not beyond the scope of Environmental Law and that the impugned approval has been obtained by concealment of facts therefore the respondent No.3 whose comments totally negate the claim of respondent No.2, has rightly pointed out that without its NOC environmental approval is liable to be cancelled.

7. In reply to above, learned counsel for respondent No.2 contended that the functions of the Agency prescribed in section 6(1) of the Act, 2014 are limited to the matters concerning to the Environment. He referred the definitions of various terms from section 2 of the Act, 2014 contending that the Cultural Heritage and Antiquities is not environmental matter and is beyond the scope of EIA process of the Agency and so also the proceedings of this Tribunal as the Heritage and Antiquities are governed by their own special law and accordingly, the appellant should approach relevant authorities under such Acts and not the Agency or the Tribunal under the Act, 2014 as it is established principle that where there is special law it must trump a general law and thus the Act, 2014 at the best is a general law for the purpose of Antiquities and Heritage buildings. He also contended that it is an admitted position that the plot in respect of which the EIA has been granted is not heritage property and that the notification of 2018 filed by appellant is under the Act, 1994 and not the Act, 1975 therefore the properties mentioned therein cannot be considered as protected immovable antiquities under the Act, 1975.

8. Learned Law officer of the Agency-respondent No.1, submitted that the project site is a demolished building/plot and it is never declared as protected heritage under the Act, 1994 and that the project was approved with stringent conditions in accordance with the provisions of the Act, 2014 and the Regulations, 2014 and accordingly, the NOCs as required for EIA approval were submitted by proponent in compliance of Regulation 9(2)(c) of the Regulations, 2014 and thus, the Agency has not violated any provision of Environmental Law.

9. Whereas, the Secretary of Culture, Tourism and Antiquities Department, Government of Sindh (Respondent No.3) has not pursued this matter since after filing parawise comments on the memo of this appeal. It was stated in such comments that the respondent No.2's plot No.222 has been declared as protected heritage under the Act, 1994 however, the Agency has issued NOC for proposed project without consultation with their department (respondent No.3). It was further stated that according to law, the matter for grant of NOC for such projects on protected heritage is

required to be placed before Advisory Committee headed by Chief Secretary, Sindh for its approval however, in the present case, the Agency has issued NOC at its own level which is a gross violation of the Act, hence such approval may be cancelled.

10. We have considered the submissions of the parties. Regulation 9(2)(c) of the Regulations, 2014, repeatedly referred by contesting parties, provides that every EIA report filed with the Agency shall be accompanied by, inter alia, NOCs from relevant departments which shall be the part of EIA report. Record shows that total five NOCs of different departments i.e KWSB, SSGC, CAA, K-Electric and AHQ, were filed by respondent No.2 together with EIA report. So, here the requirement and relevancy of NOC of respondent No.3's department, within the scope of the Act, 2014, is in question. In this connection, section 2 of the Act, 2014 provides the definitions of various terms including the "Environment" which as per clause (xii)(a) and (e) is defined to mean, inter alia, the air, water, land, natural resources and buildings, structures, works etc. In clause (xiii) the "Environmental Aspect" is defined as, an organization's activities or services that can interact with the environment. Definition of "Adverse Environmental Effect" is given in clause (i) to mean, impairment of, or damage to, the environment, human health and safety or to property, etc. "Environmental Impact Assessment" has been defined in clause (xv) which means an environmental study comprising, inter alia prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigation and compensatory measures, etc. The "Project" is defined in clause (xlii) to mean any activity, plan, scheme, proposal, or undertaking involving any change in the environment and includes, inter-alia, construction or use of building or other works, any change of land use, or water use, etc. While subsection (4) of section 17 of the Act, 2014 requires filing of EIA report complete in all respects in accordance with Regulations. Subsection (1) of section 6 of the Act, 2014 enumerates the functions of the Agency, and its clause (a) requires the Agency to implement the provisions of this Act and the Rules and Regulations. Its clause (w) says that the Agency shall take all necessary measures for protection, conservation, etc. of the Environment. While "protected area" is defined in Regulation 2(j) of Regulations, 2014 to mean any area which protect, inter alia, conservation of cultural significance.

11. Whereas the Antiquities Act, 1975, provides in section 22 that:

"Notwithstanding anything contained in any other law for the time being in force, no development plan or scheme or new construction on, or within a distance of two hundred feet of a protected immoveable antiquity shall be undertaken or executed accept with the approval of the Director General."

The appellant in its comments dated 22.10.2020 filed on EIA report of June, 2020, had submitted before the Agency a list of 8 buildings bearing plot Nos. 213, 215, 221-A, 222-A, 223, 244, 245 and 247 which, according to them, are the protected antiquities/heritage

sites falling within 200 feet radius of project site. The definitions of relevant terms as are given in section 2 of the Act, 1975 include "Ancient" in relation to an antiquity, means an antiquity which has been in existence for a period of 75 years. The meaning of "Antiquity" includes architecture, etc. Whereas "Protected Antiquity" means an antiquity which is declared under section 10 to be protected antiquity. Subsection (1) of section 10 of the Act, 1975 provides that the Federal Government may by notification in the official gazette, declare any antiquity to be protected antiquity for the purpose of this Act. However, no such notification of Federal Government is yet produced to show if any property/building falling within 200 feet of project site, has been declared/notified as protected antiquity. The concerned department of Archaeology and Museums, Government of Pakistan is not party to this matter. In this connection, the respondent No.2 in its EIA report had already stated at para 2.6 (page 17) that after 18th amendment in the Constitution the subject of "Ancient and historical monuments, archaeological sites and remains" was devolved to the provincial legislation. He further stated in the same para that Sindh Cultural Heritage (Preservation) Act, 1994 is the provincial law for the protection of cultural assets and its objectives are similar to those of the Antiquities Act, 1975. However, the Culture, Tourism and Antiquities Department, Government of Sindh has been added in this appeal as respondent No.3.

12. The said Act, 1994 in clause (vi) of section 2, also defines "protected heritage" as under:

"any premises or objects of archaeological, architectural, historical, cultural or national value declared as such by Government by notification that would include the land externally appurtenant such thereto and the out walls thereof."

Subsection (1) of Section 6 provides that:

"Government may, by notification in the official Gazette on the recommendation of committee or otherwise declare any premises of historical, cultural or architectural value to be protected heritage within the meaning of this Act."

Subsection (1) of section 10 of the Act, 1994 further provides:

"If it is apprehended that any person intends to destroy, remove, alter, deface or imperil the protected heritage or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 8, the committee may an order prohibiting any such contravention."

The appellant also contends that out of 8 antiquities/heritage buildings which are surrounding within 200 feet of respondent No.2's project/plot No.222, two properties/buildings Nos.CAN-244 and 245 were notified by the provincial government on 25.04.2011 and published in the official gazette on 07.06.2011 to be the

protected heritage under the Act, 1994, and two other properties/buildings Nos.223 and 221-A/222-A are very near and close to plot No.222 being adjacent to it from both sides and therefore, the EIA approval for deep excavation for six basement and many other things, exposes threat at least to these nearest properties which are adjacent to the project site. This is denied by respondent No.2 whose counsel contends that there is no notification of Federal Department regarding eight protected antiquities allegedly falling within 200 feet of project site and there was no gazette notification of Provincial Government at the time of EIA approval accorded in 2020 and the notification subsequently published in the official gazette in 2021, has no retrospective effect and even otherwise the same is invalid in respect of two properties adjacent to project site.

13. As per claim of respondent No.2 made in para 6.2 (page 123) of EIA report, the project site has no sensitive areas such as protected sites or any archaeological, historical or cultural heritage within the zone of influence, as such its sitting would have no sensitivity. In para 6.4.5 (page 130) it is further claimed that there are no protected or otherwise cultural or archaeological sites in the micro-environment of the project site hence no impact of the project will occur on cultural or archaeological resources. However, in para 2.6 (page 17), the respondent No.2 also mentioned that about 600 historic buildings were declared heritage sites under the Act, 1994. Record shows that 95 buildings, only from the limited area of Cantonment Quarters Karachi, are declared by Government of Sindh on recommendations of the Advisory Committee, to be the protected heritage on account of their architectural value, vide notification dated 26.04.2018 issued by Culture, Tourism and Antiquities Department (respondent No.3) under the Act, 1994 wherein it was specifically mentioned that any intentional act to build on or near the protected heritage site would be unlawful. Such notification was also published in daily Dawn Karachi on 07.05.2018. Subsequently, the same was also published in official gazette on 10.06.2021. The said 95 buildings include the offices at plot No.CAN-223 and officers' suites at plot No.CAN-221-A/222-A which are enlisted at serial Nos.69 and 70 of such notification. As per the layout/site plan (page 31 of EIA report) the building No.222-A is in North and 223 is in South of the project site i.e plot No.222 which is said to be a demolished building/plot lying between the said properties already declared protected heritages. While there are roads on remaining two sides of it.

14. According to learned counsel for appellant the protected heritage sites are also the sensitive areas having direct relevancy to environmental concerns as is highlighted in detail in the "Guidelines for sensitive and critical areas", issued by Government of Pakistan in 1997. Such booklet has been placed on record in support of his arguments regarding relevancy of the assessment of environmental impact to the antiquities and heritage sites. The relevant part of its para 2 is reproduced below:

"The object of the guideline is to provide guidance to protect proponents and other stakeholders in the environmental assessment process, so that the proposed projects are planned and sited in a way that protects the values of sensitive and critical areas.

These guidelines will help proponents of projects requiring Environmental Reports:

in identifying what are the officially notified protected areas in Pakistan. These may include critical ecosystems including wildlife reserves and forests, archaeological sites, monuments, buildings, antiquities, or cultural heritage sites;

if a proposed development is on a notified protected area or within the vicinity of such an area, then the approach detailed in this guideline should be adopted."

It appears that the above guide book is just like a warning for the proponents to be conscious while submitting EIA report for construction on or within the vicinity of antiquities/heritage sites, etc. In the circumstances, the case law reported as 2018 SCMR 1885, 2019 SCMR 859, 2017 SCMR 831 and 2008 SCMR 1148 relied upon by learned counsel for respondent No.2 and PLD 2004 SC 261, PLD 2016 Sindh 31 and PLD 2020 Sindh 85 relied upon by learned counsel for appellant, is likely to touch the merits of case if discussed at this stage while dilating upon the controversies of the parties.

15. It is clear from the above that respondent No.3's department is one of the relevant departments whose NOC/approval/clearance or otherwise, is required in terms of Regulation 9(2)(c) of the Regulations 2014, so as to be made a part of EIA report, falling within the scope of the Act, 2014 and the Regulations framed thereunder. The Act, 2014 allows certain construction of the buildings, etc. and the Act, 1994 prohibits some construction under certain terms and conditions, respectively, which cannot be gone through in detail at this stage, especially when such objections raised by appellant in its comments filed on EIA report, were not considered by respondent No.1 while passing/ issuing impugned order/decision signed by his subordinate officer. However, it is an admitted position that the construction of the project building is not yet commenced. In the circumstances, the applicability of various provisions of law as referred to above, and the validity of the aforesaid Notifications, etc. can be considered together with the merits of the case especially the environmental issues, if any, after due compliance of relevant provisions of law by the respondents.

16. As a result of the above, this matter is remanded to respondent No.1 who shall treat the EIA report of respondent No.2 pending and he, after getting respondent No.3's NOC/approval/clearance or otherwise, shall continue the process afresh which includes inviting objections/ concerns on EIA report, conducting public hearing, visiting project site, consulting Experts' Committee, soliciting views

of Advisory Committee (in terms of Regulations 12, 24 etc. of Regulations, 2014), with active participation of the experts/nominees of respondent No.3 whose views shall be recorded in minutes of meetings and shall also be discussed, followed by reasons, in the decision/order to be passed, issued and signed by Director General SEPA, within a period of three months of the receipt of copy of this order.17. Accordingly, the impugned order is set-aside and this appeal is disposed of in the above terms, with no order as to cost. MH/2/SET Case remanded.

Case:19 Abdul Qayoom

2023 C L D 946

[Environmental Protection Tribunal]

Before Justice (Retd.) Nisar Muhammad Shaikh, Chairman, Muhammad Arif Khan, Member (Legal) and Abdul Rauf Memon, Member (Technical)

ABDUL QAYOOM and another---Appellants

Versus

SINDH ENVIRONMENT PROTECTION AGENCY through D.G. and another---Respondents

Appeal No. 5 of 2022, decided on 15th April, 2023.

Date of hearing: 15th April, 2023.

JUDGMENT

NISAR MUHAMMAD SHAIKH, CHAIRMAN.---This appeal under section 27(1) of Sindh Environmental Protection Act, 2014 (the Act, 20111 has been filed by appellants challenging the approval dated 06.04.2022 of Environmental Impact Assessment (EIA) accorded by respondent No.1-Sindh Environmental Protection Agency (the Agency) to respondent No.2-Malir Expressway Limited (Proponent) for construction of Malir expressway (Project).

2. The project is described to be a 90 feet wide with six-lane, dual carriageway of 38.75 kms, a direct route for heavy vehicles from industrial areas of Landhi and Korangi, starting from Jam Sadiq Bridge on Korangi road and running along the right bank of Malir river through districts Korangi and Malir, and terminating on Motorway (M-9) at Kathore near DHA city, outside Karachi. The proposed project also includes 5 interchanges, 2 flyovers, 4 underpasses, 4 cross drainage bridges, 8 cattle and 31 cross drainage culverts. This project is scheduled to be completed in 30 months. Its estimated total cost is PKR-27.5 billion out of which, around 77% is public's money in the shape of Government of Sindh's fund and that of the syndicate of Banks backed by Government of Sindh's guarantee.

3. We have heard arguments and also gone through written synopsis of arguments and perused record as well as R&Ps available in official file of the Agency including EIA report.

4. At the very outset, the respondent No.2 (Proponent) in its reply to memo of appeal, has raised some preliminary/legal objections, one of which is that this appeal is not maintainable as appellants are not

aggrieved persons. Learned counsel for respondent No.2 contended that this appeal is devoid of any material so as to claim any grievance as the appellants in their appeal have not mentioned as to how they are aggrieved persons to challenge EIA approval specially when they neither participated in public hearing nor filed any objections to EIA report and that the alleged objections filed with this appeal as annexure A-2 are at best, an anonymous letter which bears no signature of appellants therefore they cannot be treated as aggrieved persons under section 27(1) of the Act, 2014. The same reads as under:

27. Appeals to the Environmental Protection Tribunal.-

(1) Any person aggrieved by any order or direction of the Agency under any Provision of this Act or the rules or regulations may prefer an appeal with the Environmental Protection Tribunal within thirty days of the date of communication of the impugned order or direction to such person.

5. On the other hand, learned counsel for appellants contended that the assertions of appellants made in paras 2 and 7 of appeal, that appellant No.1 is a concerned citizen, resident of district Malir and is directly affected by the project and that appellant No.2 being a scientist is very much concerned to environmental issues etc. and he attended public hearing and filed objections to EIA report and also sent reminders to respondent No.1, are not denied by concerned respondent No.1 in its parawise reply to this appeal and admittedly, the respondent No.1 had conducted public hearing and not respondent No.2. He further contended that appellants being residents of the project area, particularly appellant No.1 who resides in project impact zone, are aggrieved persons as is also affirmed on oath in the rejoinder affidavit filed by appellant No.2 who has already contested another appeal also, before this Tribunal as a concerned citizen. He also argued that it is well settled law that in environmental matters, locus standi is not strictly applied and that the language of Sindh Environmental Protection Act, 2014 and its Regulations of 2021, clearly show that the objections and appeals need not be brought only by the persons specifically aggrieved by the project and since the environment is a general concern to public trust, any person aggrieved may bring forward the case. He further argued that the appellants are also seriously aggrieved on the breach of various mandatory provisions of Environmental Law and therefore also, they have sufficient interest in the matter. In support of his contentions, he placed reliance on the cases reported as 1999 SCMR 2883, PLD 1969 SC 65, PLD 2014 Sindh 511, 2016 CLD 1011 and 2010 CLD 1555.

6. In rebuttal, learned counsel for respondent No.2 submits that the citations as relied upon by appellants' counsel are inapplicable and do not support to their contentions and if their stance is adopted, it would render statutorily imposed precondition redundant as the appellants have failed to establish how they are aggrieved by the project or EIA approval and even, they have failed to show their

personal interest in the matter. In support of his contentions, he also referred to para 13 of the same reported case already relied upon by appellants' counsel i.e 1999 SCMR 2883, which is reproduced as under:

"13. We may also refer to the following judgments of this Court in which the concept of locus standi has been dilated upon in relation to a Constitution petition and, inter alia, it has been held that for maintaining a proceeding in writ jurisdiction, it is not necessary that a writ petitioner should have a right in the strict juristic sense, but it is enough if he discloses that he had a personal interest in the performance of the legal duty, which if not performed or performed in a manner not permitted by law, would result in the loss of some personal benefit or advantage or curtailment of a privilege in liberty or franchise ....."

7. It appears that the respondent No.1 who issued impugned decision of EIA approval, in his parawise reply to this appeal, has not denied the assertions of appellants made in paras 2 and 7 of their appeal, which is rightly pointed out by appellants' counsel. It is also a matter of record that the present appellant No.2 in his same capacity i.e concerned citizen, has already contested as one of the appellants, before this Tribunal in the Appeal No.09 of 2020 regarding Arif Belgaumi and others v. Sindh Environmental Protection Agency and another (2022 CLD 502), decided by this Tribunal vide order dated 09.11.2021. Such case was against the approval for development of Clifton Beach which was intended to be constructed by Cantonment Board Clifton (CBC) being a proponent of such project. As far as the citations relied upon by appellants' counsel are concerned, the relevant passages from each, as referred to by him, are hereby reproduced one by one. In the case of Ardeshir Cowasjee and 10 others v. Karachi Building Control Authority and 4 others (1999 SCMR 2883), the reference was made at para 12 to a well known treatise "Judicial Review of Administrative Action" (By de Smith, Woolf and Jowell), wherein the authors summarized the concept of locus standi in the context of `sufficient interest' which also includes that:

"A great variety of factors are capable of qualifying as sufficient interest. They are not confined to property or financial or other legal interests. They can include civic (or community) environmental and cultural interests. The interests can be future or contingent."

In H.M. Saya & Co., Karachi v. Wazir Ali Industries Ltd., Karachi and another (PLD 1969 SC 65), in connection with affected person, it was observed (page 69) that:

"The English courts have consistently followed the practice that a person who is not a party to a suit or a proceeding may prefer an appeal if he is affected by the judgment, decree or order of the trial Court provided he obtains leave from the Court of appeal....."

In Pakistan Defence Officers Housing Authority v. Federation of Pakistan through Secretary, Ministry of Environmental Protection and 6 others (PLD 2014 Sindh 511), it was held (para 21) about the party aggrieved by the breach of provisions of Environmental Law, that:

"... ....Every suit in which a declaration is sought is not, and does not have to be, a declaratory suit under section 42. What DHA is aggrieved by is a breach of the provisions of the 1997 Act and the 2000 Regulations. Those are the terms on which the declarations are sought. Such declarations (i.e., on account of an alleged breach of statutory duty) are routinely sought from the Courts and if the plaintiff is found entitled, granted in my view, a suit of the nature filed by DHA ought not to be tested on the anvil of section 42..."

In the above case, the High Court of Sindh also referred two judgments reported as PLD 2007 Kar. 293 and 2009 CLD 682, and observed (para 27, page 537) that in both these cases the petitioners were concerned citizens. Whereas in Feryal Ali Gauhar and others v. Environmental Protection Agency, Punjab and others (2016 CLD 1011-Lahore), the following portion of para 8 has been referred by learned counsel on the point that appellants have rightly availed alternate remedy before this Tribunal being aggrieved persons:

"8. Apart from the above, section 22 of the Punjab Environmental Protection Act, 1997 runs as 'Any person aggrieved by any order or direction of the [EPA, Punjab] under any provisions of this Act' may file an appeal to the Environmental Protection Tribunal, which is functioning at present in full strength with a Chairperson, Technical and General Members, after its establishment under the Punjab Environmental Protection Tribunal Rules, 2012.

Therefore, when the petitioners have alternate efficacious remedy available with them, they ought to have approached the said forums instead of approaching this Court seeking invocation of extraordinary constitutional jurisdiction... ...."

While the observations of this Tribunal recorded in the case of Syed Haroon Ahmed v. Messers Dadex Eternit Ltd. through Chairman and another (2010 CLD 1555), are as under:

"16. An other objection taken by the respondent side is that the complainant is not an aggrieved person, therefore, he has no locus standi to file the instant complaint. In this regard, it may be noted that the complainant is brother of deceased. Furthermore the issue of environmental hazard raised by the complainant seems to be an issue of public interest, in which case principle of aggrieved person cannot be strictly applied... ...."

8. Apart from above, we also find that the case of Ms. Imrana Tiwana and others v. Province of Punjab and others (2015 CLD 983) relied upon by learned counsel for the parties on some other point, was also filed by petitioners as concerned citizens of Lahore against the

construction of a Signal free Corridor. It also appears from such case that in landmark Rio Summit 1992 which laid down the foundations for the global institutionalization of sustainable development, to which Pakistan is also a party, also emphasized inter alia in principle 10 of Rio Declaration that "Environmental issues are best handled with participation of all concerned citizens, at the relevant level....." In such circumstances, it appears that the concerned citizens like in this case, are not being prevented from placing their grievances before the competent courts or higher forums even if they are not direct affectees but they notice that environmental issues are handled wrongly or unjustifiably with illegality and irregularity etc. Accordingly, considering the submissions of contesting parties in the light of relevant record and the law, we are of the view that the appellants have had a right to approach this Tribunal as aggrieved persons being concerned citizens having sufficient interest and locus standi to be heard in the matter.

9. Next preliminary objection raised by respondent No.2 is that the appeal is not maintainable also on the ground that EIA approval is not appealable in terms of section 27 of Sindh Environmental Protection Act, 2014 which requires that an appeal can only lie against order or direction of the Agency and that the decision approving EIA cannot be termed to be an order or direction entitling any one to file appeal. In this regard, learned law officer of respondent No. I also submitted that the appeal is bad in law and is not maintainable as against a decision which is not appealable. Whereas learned counsel for appellants submitted that when a decision rejecting an EIA is appealable then how a decision approving an EIA is not appealable and that respondent No.2 is narrowing the scope and purpose of the Act by reading it incorrectly.

10. On the above controversy, we find that in one of the above referred citations i.e 2016 CLD 1011, the petitioners called in question the decision of Environmental Protection Agency, Punjab through which the approval for construction of the project was granted. It was prayed in such petition to declare inter alia, the impugned decision of EIA as illegal and without legal effect Lahore High Court observed that "when the petitioners have an alternative efficacious remedy available with them, they ought to have approached the said forum." Such forum was also held to be Environmental Protection Tribunal. In support of above, the High Court also placed reliance on six other cases including the one reported as 2015 SCMR 1739 (which on some other points, has also been relied upon by both parties to this case), in which the Supreme Court also observed that the right of appeal and further remedies on the merits of EIA approval available under Pakistan Environmental Protection Act, 1997 have not been availed by objecting respondents. It is clear from above that the appeal against EIA approval is to be filed before Environmental Protection Tribunal and accordingly, such appeals are being filed since the enactment of Environmental Protection Act, 1997 and now under the Act, 2014 and no case has

been cited to show if any appeal against EIA approval has ever been returned or not entertained or dismissed on the ground that impugned approval of EIA is not appealable. Even otherwise, in the impugned order titled as 'decision' in the format provided in Schedule VII of SEPA (Environmental Assessment) Regulations, 2021, the conditions imposed therein are the directions, the copy of which was also supplied to appellants as is admitted by respondent No.1. Thus the requirement of sections 27(1) of the Act, 2014 stands fulfilled.

11. In respect of further preliminary objection, learned counsel for respondent No.2 argued that this appeal is also time barred as section 27(1) of the Act, 2014 provides 30 days time limit for filing an appeal against impugned order which was issued on 06.04.2022 but this appeal was filed on 13.05.2022 with a delay of seven days which is not condonable. He submitted that no doubt the period of 30 days starts from the date of communication of impugned order but section 27(6) of the Act, 2014 provides that the Agency shall maintain Registers for IEE and EIA containing brief particulars of each project and a summary of decisions taken thereon which shall be open for inspection of public. He emphasized that such Register must be construed as notice to the public, at least in this case where there is no address or name with whom to communicate, as the objections relied upon by appellants who did not even attend public hearing, are at the best of anonymous persons and the time against them ought to start from the date of EIA approval and accordingly, the approval order dated 06.04.2022 impugned on 13.05.2022 makes this appeal barred by time.

12. Learned counsel for appellants conversely submitted that the appeal is well within time as the period of 30 days commenced from the date of communication of impugned order dated 06.04.2022 which was admittedly communicated by respondent No.1 to the appellants on 26.04.2022 and as such the appeal filed on 12.05.2022 was within prescribed limit of 30 days of the communication of decision and such fact is not denied by concerned respondent No.1 in his reply to paras 7 and 8 of appeal hence nothing more is needed to prove such fact.

13. It seems from record that in para 7 of memo of appeal the appellants asserted that they attended public hearing and raised multiple objections and along with other concerned citizens, submitted comprehensive written objections (Annex. A-2) on EIA report and then they also sent reminders (Annex. A-3) to respondent No.1 to provide information about the status of their objections and EIA review process but respondent No.1 did not reply to it. Whereas respondent No.1 in his parawise reply, has not denied the above assertions stating that public comments and suggestions were considered and eventually the project was approved in accordance with law. In para 8 the appellants claimed that when it was reported in newspaper (Annex. A-4) that respondent No.1 has accorded approval, they immediately approached respondent No.1 for obtaining copy of EIA approval and also the decision made on their

objections, and then respondent No.1 supplied copy of approval on 26.04.2022 but did not supply decision on their objections. This too was not denied by respondent No.1 in his parawise reply stating only that the copy of decision was provided to appellants.

14. A perusal of respondent No.1 's official file/R&Ps also shows the participation of appellants in public hearing held on 09.03.2022 and their names are appearing respectively at Sr. Nos.214 and 232 of attendance sheet available at page 48-90 in the official file. The minutes of public hearing available at pages 150-162 of official file show the names of those participants who put questions or raised objections and the name of appellant No.2 is also appearing at page 156 as one of the objectors. He raised many questions and queries as was recorded by the Agency. The written objections dated 09.03.2022 lying in official file at page 270-276 also bear the signatures of four persons/climate activists including appellants No.2 at its last page after para 9, which page is however missing from copy of such objections filed as Annex. A-2 to memo of this appeal. At page 386 of official file, there is an application dated 26.04.2022 moved by appellant party/NGOs on a letter head of `Indigenous Rights Alliance, Karachi' and its simple copy is filed with this appeal as Annex. A-3 which was moved to D.G SEPA for providing a copy of decision made on the objections and EIA approval.

15. The above facts and circumstances of the case and available record, however support the stance of appellants to the extent that they participated in public hearing, raised objections on EIA report and also filed written objections and after approval of EIA they were supplied copy of decision of EIA approval on 26.04.2022 against which they filed this appeal on 12.05.2022 and as such the appeal is well within time prescribed in relevant section 27(1) of the Act, 2014.

16. It is also argued by learned counsel for respondent No.2 that the EIA report filed by respondent No.2 before the Agency on 13.10.2021 being complete in all respect, shall be deemed to have been approved on 12.02.2022 on expiry of the period of four months in terms of section 17(4) of the Act, 2014. He further argued that for the first time a public hearing of the EIA was scheduled on 29.11.2021 which was postponed at the request of respondent No.2 due to non-availability of its consultant but thereafter respondent No.1 caused significant delay and did not schedule another date of public hearing until 09.03.2022 to which the respondent No.2 did not object as the project being Government's initiative was in the larger interest of public. On the other hand, learned counsel for appellants contended that the claim of respondent No.2 for their entitlement under deeming clause is misconceived as respondent No.2 admits that at its request the first public hearing was postponed so it cannot claim benefit of its own fault of delaying review process and that it has acquiesced from claiming benefit of section 7(4) by not objecting to public hearing on 09.03.2022. In rebuttal, learned counsel for respondent No.2 contended that the

benefit of deeming clause is unqualified and is not subjected to any acquiesce or waiver and the duty to conduct public hearing was of respondent No.1 so mere a single adjournment does not shift burden on respondent No.2.

17. It is an admitted position that respondent No.1 had scheduled public hearing to be held on 29.11.2021 and it was postponed at the request of respondent No.2. In this connection, official file shows that on 03.02.2022 the Agency issued a letter to Project Director (P.D) of respondent No.2 for his appearance before D.G of the Agency for personal hearing with explanation about the status of project and compliance of Environmental Law after the public hearing scheduled on 29.11.2021 was postponed. It was thereafter that public hearing was held on 29.03.2022. Such delay of more than three months from the first date of public hearing i.e 29.11.2021 to second date i.e 09.03.2022, was apparently due to the adjournment sought by respondent No.2 and then its further delay which resulted in personal hearing with explanation of P.D of respondent No.2 was also on their part as naturally, the fresh date of public hearing could not be fixed by respondent No.1 without consent of or consultation with respondent No.2. Accordingly, the provisions of deeming clause in terms of 17(4) of the Act, 2014 are not attracted to be applied in this case.

18. On the other hand, appellants have also raised some argumentative preliminary objections on review process of EIA. On their first objection, learned counsel for appellants submitted that the consultation with Advisory Committee constituted under section 5(6) of the Act, 2014 vide notification of Government of Sindh dated 29.10.2018, is a mandatory requirement of law but the impugned approval was accorded without such consultation which is violation of law as the Advisory Committee and Experts Committee have to review the case and consider the reservation of community but the approval was granted without due process of law. In support of his submission he referred para 87 of the case reported as 2015 SCMR 1739 which is as under:

"87. This was clearly not done in the present case. Further, section 5(6) of the Punjab Environmental Protection Act, 1997 imposed a mandatory duty on the Provincial Government to constitute Advisory Committees under the said Act. This committee is meant to assist the Environmental Protection Agency in evaluating the environmental impacts of the projects under consideration. The failure by the Provincial Government to constitute the said committee violated its statutory duty."

19. Whereas learned counsel for respondent No.2 submitted that though the function of Advisory Committees as prescribed under section 6(1)(b) of the Act, 2014 is to assist the Agency in preparing environmental policies for the approval of the Council, and not for any particular project, yet no provision of Environmental Law requires the approval of Advisory Committee prior to approval of EIA as the role of such committee is limited to only assist the Agency

and no consequence has been prescribed if the advisory committee could not be consulted for assistance because such provision is not mandatory but is directory in nature as the Act or Regulations do not provide for invalidation of EIA approval in case the assistance of advisory committee could not be obtained. In support of his contentions, he relied upon the cases reported as 2021 SCMR 305 and 2021 SCMR 328. He further contended that the reliance of the counsel for appellants on the obiter observations of Supreme Court at para 87 in LDA case reported as 2015 SCMR 1739, is erroneous as at next paragraph 88 it was observed that "We would have struck down the EIA for these reasons but eventually decided against it." So, according to learned counsel, the Supreme Court used the word "these" instead of word "this" and such distinction clarifies that the reasons as referred at para 88 includes all that is said from paragraphs 1 to 88 and not only as said in paragraph 87, while the instant appeal does not involve any matter pertaining to Lahore Development Act, 1975 or doctrine of regulatory capture as discussed by the Supreme Court which is summed up by the words "these reasons". He therefore contended that the decision of Supreme Court cannot be read wrongly to mean that for the sole reason of non-consultation with advisory committee the Supreme Court would have struck down the EIA. He also contended that the appellants seek to strike down the approval through this Tribunal upon mere presumptions and apprehensions which was not done even by Supreme Court as is evident from paragraph 90 and on the contrary, at paragraph 93 the Supreme Court upheld the EIA despite the fact that no Advisory Committee was even constituted. He also added that an Expert Committee was also constituted in this case under Regulation 21 of Regulations, 2021 for assistance in evaluation of the EIA and the Agency also obtained assistance of experts in the similar sprit of section 5(6) of the Act, 2014.

20. Both the parties' counsel have relied upon the case of Lahore Development Authority and others v. Ms. Imrana Tiwana and others (2015 SCMR 1739) in relation to the Advisory committee required to be constituted under section 5(6) of the Act, 1997 which reads as follows:

"(6). For assisting the Federal Agency in the discharge of its functions, the Federal Government shall establish Advisory Committees for various sectors and appoint as members thereof imminent representatives of the relevant sector, educational institution, research institution, and non-governmental organizations".

Such Advisory Committee was not constituted by Govt. of Punjab though it was mandatory and statutory duty of provincial government as observed in the cited case at paragraph 87 already reproduced in paragraph 18 above. However, it is an admitted position that such advisory committee was notified by Government of Sindh under section 5(6) of the Act, 2014 on 29.10.2018. This narrows down the controversy between the parties on the point in question. Now the remaining part of paragraph 87 of the said

judgment, is that ".....This committee is meant to assist the Environmental Protection Agency in evaluating the environmental impact of the projects under consideration....."

The relevant paragraph 93 of the said judgment is also reproduced below:

"93. Having dealt with the peripheral now to the consequential matter. As we are partly allowing these appeals, allowing the Project to be completed and upholding the EIA, the directions issued in paragraph 100A of the judgment against various officials have to be vacated"

21. Accordingly, the consultation with advisory committee was required to assist the Agency during review process and prior to approval of EIA. Admittedly, in the above referred case, no consultation with advisory committee was held and no advisory committee was even constituted, however, the EIA was upheld and the Signal-free Corridor Project was allowed to be completed. No doubt, the advisory committee constituted under section 5(6) of the Act, 2014 could not be consulted upon by respondent No.1 of this appeal for seeking its assistance in evaluating the environmental impact of the project, but some other relevant provisions of the Act and Regulations are however complied with by the Agency as appears from R&Ps of official file. The case at hand is governed by the provisions of section 17 of the Act, 2014. This section deals with IEE and EIA as well as review and approval thereof. As per its subsection (5), the provisions of subsections (1) to (4) shall apply to such categories of projects and in such manner as prescribed. Accordingly, the Regulations were made under section 37(1) read with subsection (2)(f) of the Act, 2014 and called as "The Sindh Environmental Protection Agency (Environmental Assessment) Regulations, 2021 which further provides for review process in Regulation 12, the relevant sub-regulations of which are as under:

"(1).....

(2) In reviewing an EIA, the Agency shall consult such Committee of Experts be constituted for the purpose by the Director General, and may also solicit views of concerned Advisory Committee, if any, constituted by the Agency.

(3) The Director General may, where considers it necessary, constitute a committee to inspect the site of the project and submit its report on such matters as may be specified.

(4) .....

(5) The review of IEE or EIA by the Agency shall be based on quantitative and qualitative assessment of the documents and data furnished by the proponents, comments from the public and Government Agencies received under regulations 12, and views of the committees mentioned in sub-regulations (2) and (3) above.

(6) ....."

22. The official file of the Agency shows that on 24.03.2022 the site was visited by a team of respondent No.1 and others and such minutes/report with photographs are available in such file which further shows that an Experts' committee was also constituted under regulation 12(2) of Regulations, 2021 for evaluation of EIA and to assist the Agency in reviewing EIA report. The members of Experts' committee were consisting on the Senior Environmentalists, Head of Energy and Environment IOMB, Karachi, Department of Environmental Studies, University of Karachi, Structural Engineer, Senior Hydrologist, Air Quality Expert, Project Director, KUTC and Transport Experts. The meeting of such Experts' committee was held on 01.04.2022 and its minutes were also recorded in detail which are also available in official file of the Agency. Apart from above, some other material/reports are also available in the R&Ps of the Agency and therefore, we are of the view that sufficient efforts were taken by the Agency to acquire assistance by different modes during review process prior to EIA approval and mereby reason of non-consultation with advisory committee constituted under section 5(6) of the Act, 2014 the respondents are not liable to be penalized to the extent of setting aside the EIA or remand of the case on such ground alone.

23. The remaining citations relied by the parties on the above point, are however distinguishable and not applicable to the instant case. The appellants also referred this Tribunal's order passed in the case of Arif Belguami and 4 others v. Sindh Environmental Protection Agency and another (2022 CLD 502), but in such case the project was not falling in any of the categories listed in the schedules therefore a particular category "K" of schedule-I meant for "other projects" which required an IEE, was applied by proponent but the same was specifically dependent upon the compliance of sub-regulation (2) of regulation 6 of SEPA (Review of IEE and EIA) Regulations, 2014 which mandatorily required recommendations of the Committee constituted under regulation 24 of the said Regulations, 2014 (now repealed on 09.09.2021) therefore, for such compliance as well as some other, the case was remanded to the Agency for due compliance in accordance with law. Such case is however distinguishable and is inapplicable to the instant case in which the EIA has already been approved for the project falling under entry (2) category "E", Schedule III of newly framed Regulations, 2021. In support of the stance of learned counsel for respondent No.2 that the provisions of section 5(6) of the Act, 1997 or the Act, 2014 are directory in nature and not mandatory, he also referred two citations. Firstly, the paragraph 6 of 2021 SCMR 305 (Province of Punjab through Secretary, Excise and Taxation Department, Lahore and others v. Murree Brewery Company limited and another) which is reproduced below:

"6. The test to determine whether a provision is directory or mandatory is by ascertaining the legislative intent behind the same. The general rule expounded by this is that the usage of the word

'shall' generally carries the connotation that a provision in mandatory in nature. However, other factors such as the object and purpose of the statute and inclusion of penal consequences in cases of non-compliance also serve as an instructive guide in deducing the nature of the provision."

These observations were in relation to an issue whether section 79 of C.P.C. is a mandatory or directory provision. Secondly, he referred relevant passage of para 3 of 2021 SCMR 328 (Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal) which is as under:

"..... A provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceeding....."

Such observations were given on the question whether the proviso to section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 is directory or mandatory. However, on relevant point, the observations quoted in both reported cases have some relevancy to the instant case as asserted by learned counsel for respondent No.2.

24. With regard to another point raised by appellants on non-compliance of the provisions of section 31(3) of the Act, 2014, their counsel submitted that in disregard of such mandatory provisions the comments received from appellants and the public on EIA report were not taken into consideration during review process and no action or decision was taken thereon, nor communicated to appellants or any other person concerned. He further submitted that the objections filed by appellants and others were also required to be responded with speaking order of the Agency and thus the respondents also violated the provisions of section 24-A of General Clauses Act, 1897 as the impugned order even, passed without showing any reasons, was also not a speaking order to address the objections raised during review process and public hearing. In support of his contentions he also placed reliance on the cases reported as 2015 CLD 772, 2015 CLD 983, 2015 SCMR 1739, 1998 PLC (C.S.) 1484, 2007 SCMR 1328, 2010 PLC (C.S) 1183 and PLD 1990 SC 1092.

25. On the other hand, learned counsel for respondent No.2 contended that the procedure provided under section 31(3) of the Act, 2014 was fully complied with and it only requires the Agency to consider the public objections if any and not to reply specifically to any public objections raised. In this regard, he also referred the case relied by counsel for appellants i.e Pakistan Defence Officers Housing Authority v. Sindh Environmental Protection Agency and 2 others (2015 CLD 772) saying that a Division Bench of Sindh High Court after considering a submission that an EIA approval should be set aside as objections were not accepted or rejected through speaking order, observed that:

"..... In fact the law does not impose the responsibility of adjudication of grievances of stakeholders while approving EIA , however, law provides for reasoning only when the Agency after examining the EIA rejects the project being contrary to the environmental objectives and in case where EIA is granted law only provides that the approval shall specify the conditions subject to which it is accorded, and in the instant case approval specifies such condition on the basis whereof approval was accorded."

He further submitted that it is clear from EIA approval that it was not unconditional but it prescribes 24 conditions which are well reasoned for the grant of EIA. Regarding section 24-A of General Clauses Act, 1897 he submitted that from the language of its subsection (2) the requirement to give reasons is qualified to only it is necessary or appropriate. The same is reproduced below:

"(2). The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of order or, as the case may be, the direction to the person affected prejudicially."

Learned counsel for respondent No.2 again referred 2015 CLD 772 to contend that the High Court has already observed that it is neither necessary nor appropriate for Agency to issue reasons on each and every public objection and even otherwise, the appellants have not made any objections prior to this appeal. In respect of the citations relied upon by counsel for appellants, he submitted that all these are not applicable and are distinguishable specially the most strenuously argued case reported as 2015 CLD 983, the decision of which was appealed before Supreme Court which time and again observed in its judgment reported as 2015 SCMR 1739 that they do not agree with impugned judgment and accordingly the rationale that reasons must be given on public objections, was not upheld and therefore it is no longer applicable.

26. We have considered the above submissions and gone through the case law. The relevant subsection (3) of section 31 of the Act, 2014 reads as follows:

"3. All comments received under subsections (1) and (2) shall be duly considered by the Agency while reviewing the environmental impact assessment or strategic impact assessment, and decision or action taken thereon shall be communicated to the persons who have furnished the said comments."

Learned counsel for appellants has stressed upon the compliance of the above provision contending that no reasons were shown and no speaking order was passed by the Agency specially on accepting or rejecting the comments and objections received from the appellants and the public. In this regard, he relied upon the same case reported as 2015 CLD 772 but we find nothing in it to favour appellants on

the requirement of giving any reasons or passing speaking order. Learned counsel for respondent No.2 submitted that this reported case, on the contrary, supports the case of respondents on most of identical points. However, in another case of Ms. Imrana Tiwana and others v. Province of Punjab and others (2015 CLD 983), the requirement of the reasons and the speaking order was held necessary. Through such judgment the Lahore High Court set aside the impugned EIA approval but on appeal, the same EIA was upheld by Supreme Court in Lahore Development Authority and others v. Ms. Imrana Tiwana and others (2015 SCMR 1739) and allowed the project to be completed. Learned counsel for respondent No.2 also pointed out that in such judgment which is relied by appellants also, no word regarding speaking order has been used. So far as the remaining citations relied by counsel for appellants are concerned, the same as per counsel of respondent No.2 are distinguishable and not applicable to this appeal. However, from the case of Zain Yar Khan v. The Chief Engineer C.R.B.C. WAPDA, D.I Khan and another (1998 PLC (C.S.) 1484-SC), the Counsel for appellants referred the following portion of page 1492:

"....In departmental appeals, equally covered by section 24-A (ibid), but belonging to a higher genus, as the same attract quasi judicial functions, necessary treatment of reasons therein, cannot but be sine- quo-non for orders issuing therefrom. Even so, the fora, in which such orders are questioned, in the instant case the Service Tribunal and ultimately this Court, have a discretion either to simply set aside the departmental appellate orders for want of necessary reasons or, where the justice of a case so demands, to discover the reasons, if discernible from the record, to uphold the finding, if the finding appears to be otherwise just, convenient and purposeful."

The above observation in a service matter of WAPDA employee, also says about the discovery of the reasons from the record, where the justice so demands. In the case of Capital Development Authority and another v. Shaheen Farooque and another (2007 SCMR 1328), the relevant part of para 7, as referred, is as under:

".....Verbal order has no sanctity in law and such orders are alien to the process of the law and the courts. All orders passed and acts performed, particularly, by the State/public functionaries and adversely affecting anyone must be in writing, as section 24-A(1) of the General Clauses Act, 1897, envisages that the powers shall be exercised reasonably, fairly and justly and subsection (2) further makes it necessary that the authority passing orders shall, so far as necessary or appropriate, give reasons for making the orders and unless the order is in writing, the reasons and fairness, etc. thereof cannot be ascertained... ....".

This is also inapplicable being in respect of verbal orders relating to the allotment/cancellation of the commercial plots. In the case of Chairman State Life Insurance Corporation and others v. Hamayun

Irfan and 2 others (2010 PLC (C.S.) 1183-SC), the relevant passage of para 10 as referred, is given below:

"... ... After addition of section 24-A in the General Clauses Act it is duty and obligation of competent authority to decide the cases of their sub ordinates after application of mind with reasons. The impugned orders passed by the authority against respondents did not disclose any reason and application of mind, therefore, impugned orders passed against the respondents are not sustainable in the eyes of law as law laid by this court in various pronouncements ....."

It was also a service matter of the officers of State Life Insurance Corporation and was on different fobtings, not attracted to the case in land. In Amanullah Khan v. Federal Government of Pakistan and others (PLD 1990 SC 1092), the relevant part of para 49 as referred, is as under:

"49. The provisions of the Ordinance regarding registration of Stock Exchange being regulatory in nature, concerning the Fundamental Right or freedom of trade, business or profession have to be construed strictly and beneficially. For that reason, wherever a hearing has been provided it has to be meaningful wherever the competent authority has been given the power of refusing registration after hearing, the reason for it has to be recorded and communicated to the party adversely affected so that it can promptly and meaningfully secure its remedies of revision or review."

It is relating to the matter of refusing the applications for registrations as Stcok Exchange under Securities and Exchange Ordinance, 1969. All the above four citations are not attracted to the case in hand being distinguishable on material particulars, specially when the comments/ objections furnished by appellants and others on the day of public hearing, the copy of which has been filed with this appeal, do not show the names, address or contact numbers of appellants so as to be intimated/communicated the decision/action etc. taken by the Agency in compliance of section 31(3) of the Act, 2014 and section 24-A of General Clauses Act, 1897. However, the objections of all concerned were noted and considered by respondent No.1 as appears from the R&Ps of official file.

27. Next point raised by appellants' counsel is that the Agency illegally granted Ex-post facto approval in Aril, 2022 for the project that had been going on since December, 2020 and thus, it is also a violation of section 17(1) committed by respondent No.2 with the help of respondent No.1 by initiating construction prior to EIA approval. This is controverted by counsel for respondent No.2 contending that it is not tenable to say that a project can never obtain EIA approval post commencement of work and that the Law prescribes a penalty under section 22(1) of the Act, 2014 in case the contravention of section 17(1) of the same Act is proved as the project is being developed in accordance with law. On this controversy, we find that the action could be sought to be taken by

filing a proper complaint under section 26 of the Act, 2014 if the provisions of section 17(1) read with sections 23/24 of the same Act were violated. But at present, the alleged violation requiring a penal action, is not a ground to set aside an EIA.

28. Assailing EIA approval dated 26.04.2022 accorded by respondent No.1, learned counsel for appellants contended that the impugned approval was signed and issued by a Deputy Director of the Agency merely mentioning in the last para that "This is issued with the approval of D.G. Sindh EPA", though he had no authority under the law to approve the same and even the D.G. has also no authority to delegate such powers which could only be exercised by him to pass such a judicial and appealable order. He further contended that after the impugned approval issued by a Deputy Director on 06.04.2022, the D.G then issued a new approval dated 10.06.2022 to damage the case of appellants by filling the gaps after filing of this appeal on 12.05.2022 and that such re-issuance of new approval is illegal, abuse of authority and interference in the process of legal proceedings and is in violation of law.

29. On the other side, learned counsel for respondent No.2 contended that it was reiterated by D.G of the Agency by replying to ground "C" in his objections to this appeal that the EIA was approved by him while the issuance date of 06.04.2022 was of its communication made by Deputy Director and that such reply to memo of appeal has been verified by D.G, by affirming the impugned approval and the effect thereof. He also contended that the alleged defect was curable in nature and accordingly the D.G has also signed the approval letter dated 10.06.2022 as the impugned decision is substantially in the form prescribed by the Regulations, 2021 and that such approval is not a judicial order as no adjudicatory function is performed by the Agency while granting approval in terms of section 17(2)(a) of the Act, 2014. He further contended that the EIA approval signed by D.G on 10.06.2022 in substance and contents is exactly the same and identical as the approval dated 06.04.2022 and that if the approval dated 10.06.2022 is considered as a new approval then the same has not been challenged in this appeal by seeking amendment nor the separate appeal has been filed against such approval and accordingly, no question of rebutting the validity of such approval can be raised in this appeal which has become infructuous. He also contended that the subsequent letter of approval dated 10.06.2022 was in continuation of earlier letter of approval which is evident from communication letter dated 06.04.2022, the relevant note-sheet and the reply to memo of appeal signed by D.G, and that the subsequent letter dated 10.06.2022 has only been issued by way of abundant caution to be in line with strict letter of this Tribunal's dictate in the case of Arif Belguami (2022 CLD 502) and to remove any doubt as to the impugned approval dated 06.04.2022 allegedly issued without approval and dictate of D.G. He also argued that the curable matters and defects must never be allowed to interrupt public projects specially when curative and positive steps have already been taken

and that if the appellants are considering the same as a separate approval, it is worth mentioning that the appellants have failed to file any appeal against the same and such relief has become hopelessly time barred.

30. Refuting the arguments of learned counsel for respondent No.2 it is contended by learned counsel for appellants that the first approval dated 06.04.2022 is unlawful and without legal authority and second approval dated 10.06.2022 is also in violation of law because appellants' right to appeal had already been created and the matter was sub judice when second approval was issued and that after filing the present appeal only this Tribunal if it deemed fit, could have directed respondent No.1 to issue a new approval. To support his contentions, he also placed relied on the cases reported as PLD 1969 SC 407, 2022 SCMR 595, 2005 SCMR, 25, PLD 1990 SC 1092, 2020 SCMR 1957 and 2022 CLD 502.

31. In reply, learned counsel for respondent No.2 added that the EIA was approved by D.G and the letter dated 06.04.2022 was only a communication of D.G's approval which can be seen in the note-sheet of the summary available in R&Ps of the Agency and that when the D.G was pointed out about such defect/mistake he applied his mind and re issued letter of approval with his own signature and that non-signing of initial approval dated 06.04.2022 may, at the best, be considered only a procedural defect, non -compliance of which results in a curable defect. He further argued that it is a well-settled principle of law that technicalities should be avoided specially where the defect has been cured and that the substantial justice is always to be done. According to him, the pendency of this appeal does not automatically restrain D.G from exercising his statutory authority and there was no stay order in the field in this regard. He also placed relied on the case reported as 2003 SCMR 318.

32. Whereas learned law officer of respondent No.1 submitted that as per long standing practice since the enactment of Pakistan Environmental Protection Act, 1997 and then its substituting Sindh Environmental Protection Act, 2014, the IEE or EIA approvals used to be accorded by D.G by signing on such note-sheet of the summary and then the IEE or EIA approving decisions in the form of the letters, were used to be issued by the concerned Deputy Directors with their signatures after putting a note in the end of such approving letters that "This is issued with the approval of competent authority i.e Director General, Sindh EPA." He further submitted that it was first time that this Tribunal in the case of Arif Belguami and 4 others v. Sindh Environmental Protection Agency through D.G and another (2022 CLD 512) observed that D.G cannot delegate such powers of the Agency to any staff member unless empowered to do so under the statute but, inadvertently, the earlier practice was followed when the Deputy Director concerned, on the basis of the approval duly signed by D.G on the relevant summary, issued such EIA approval letter dated 06.04.2022 mistakenly with his own signature on behalf of D.G. He also submitted that it was all

in good faith and no sort of any mala fide can be attached to it and it was therefore, such defect was cured and rectified within one month of the filing of this appeal, by re-issuing the EIA approval letter with the signature of D.G before hearing the arguments of the parties in this appeal and such re-issuance of a letter for an EIA already approved by D.G himself, cannot be termed to be a new approval as there is no change of any word in any of the terms and conditions of both these approval letters consisting on 4/5 pages which were issued subject to stringent conditions.

33. Perusal of citations from appellants' side, shows that in the case of Pakistan through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi (PLD 1969 SC 407), it was held (page 412) that:

".....The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the determent of those rights."

In the cited case, the Government of Pakistan preferred appeal against the decision of the High Court whereby the order of the President of Pakistan, withdrawing his earlier order made in favour of respondent fixing his basic salary, was held to be without lawful authority. In the case of Sindh Irrigation and Drainage Authority v. Government of Sindh and others (2022 SCMR 595) it was held at para 13 that:

"....Public functionaries owe fiduciary duty to act in good faith and discharge their duties with honesty and in accordance with law. If a public functionary does not exercise such power in good faith and with honesty, the principle of merit gets compromised which damages the superstructure of merit, competence ad good governance...."

The point in issue in the above case was relating to the appointments of the staff in tube-well division by the Executive Engineer instead of Board of Management. From the case of Abid Hussain and others v. P.I.A.C. and others (2005 SCMR 25) the following para has been referred by appellants' counsel:

"14. In his Treatise 'Discretionary Powers' which is Legal Study of Official Discretion D.J. Galligan has acknowledged that "the general principle that discretionary decisions should be made according to rational reasons means; (a) that there be findings of primary facts based on good evidence, and (b) that decisions about the facts be made for reasons which serve the purposes of the statute in an intelligible and reasonable manner." According to celebrated author, the actions which do not meet these threshold requirements are arbitrary, and may be considered a misuse of powers."

In the above case 27 pilots out of 34 were sent for training on

Boeing-777 in USA depriving the petitioners from such training without any reason and the Supreme Court decided their appeals directing that respondents shall consider the nominations of appellants for such training in the next training course. In Amanullah Khan and others v. The Federal Government of Pakistan and others (PLD 1990 SC 1092) the reference has been made to the last portion of para 62, which says:

".....Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression that in the first instance but where the authorities failed to rationalize it and regulate it by Rules, or Policy statements or precedents, the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times."

The cited case is already referred at para 26 above on some other point, in relation to the applications for registrations as Stock Exchange under Securities and Exchange Ordinance, 1969. In Lahore Development Authority and another v. Muhammad Tariq Niaz (2020 SCMR 1957) the last passage of para 7 as referred, is as under:

"... ...It is worth mentioning that the conduct of the appellant/defendant was not aboveboard, rather they acted in a manner which was squarely against the dictates of justice. This practice if allowed to continue it might frustrate public confidence qua public functionary which might be detrimental to uphold the public order which is paramount to keep the society in peaceful atmosphere; therefore, the public functionaries are expected to perform their duties well within prescribed limits of the law of the land."

In the above case, the re-auction of the plot already auctioned was called in question by filing a declaratory suit which was decreed by trial court and maintained in the appeal and then civil appeal filed against judgment and decree were dismissed by High Court, Lahore and also by Supreme Court holding that the appellant/defendant was grossly unjustified to issue another proclamation for public auction, once its valid acceptance was made by respondent/plaintiff. In Arif Belguami case (2022 CLD 502) which is already referred twice in paras 7 and 23 above, the IEE approval was signed and issued by Deputy Director (Technical-VI) of the Agency mentioning in last para that "This is issued with the approval of Director General Sindh EPA". In this regard, while referring relevant provisions of the Act and Regulations, it was observed by this Tribunal that: "....The D.G. cannot delegate such powers of the Agency to any staff member unless empowered to do so under the statute ..." In view of the above and other legal aspects of the appeal and without dilating upon its merits on factual controversy, this Tribunal disposed of the appeal by remanding the case to respondent No.1 to decide the same afresh in accordance with law. Whereas learned counsel for respondent

No.2 quoted the following passage from page 322 of the judgment rendered in the case of Mst. Arshan Bai through Mst. Fatima Bai and others v. Moula Bakhsh through Mst. Ghulam Safoor and others (2003 SCMR 318):

"... ....It has been held time and again by this Court that technicalities shall not create hurdles in the way of substantial justice. Rules and Regulations are made to foster the cause of justice and they are not to be interpreted to thwart the same. A heavy duty is cast upon the Courts to do substantial justice and not to deny the same on mere technicalities....."

In the above reported case at its last page 324 a reference was also made to a case of The State v. Asif Adil and others (1997 SCMR 209) in which it was held that a party should not be made to suffer on account of an act or omission on the part of the court or other state functionaries.

34. It seems from the above material and the law that the position of the case in hand, so far as the point in issue is concerned, is quite different and peculiar in nature. In the case reported as PLD 2020 SC 338 which has already been relied upon by learned' counsel for respondent No.2 in connection with some other point, also says in para 17 that ".....it is well settled law that each case is to be decided on its own peculiar facts and circumstances." So, no doubt, the above mentioned passages of the citations as referred by learned counsel for appellants, are important on the principles that the public functionaries owe a fiduciary duty to act in good faith and are expected to perform well within prescribed limits of law and that the courts have to intervene in exercise of the powers appearing arbitrary and that the discretionary decisions should be made according to rational reasons. But at the same time, learned Law Officer has explained that the Deputy Director had inadvertently issued EIA approval letter with his own signature though the approval was already accorded by D.G himself with his signature on such summary and that such mistake was occurred in goodfaith with no sort of mala fide as such defect was rectified by re-issuing the same approval under the signature of D.G and as such, the defect in question was cured prior to hearing of arguments by this Tribunal and that re-issuance of EIA approval cannot be termed to be a new approval. This explanation of law officer seems to be plausible in peculiar circumstances of this case and accordingly, re-issuance of proper EIA approval in goodfaith in place of earlier issued defective approval, excludes the application of both points relating to the exercise of discretionary powers or use of arbitrary powers so as to be termed as misuse of powers by public functionary, the respondent No.1 herein. Moreover, by issuance of second letter of approval, there was no sort of any change in the complexion, character or substance of earlier issued approval. Therefore, at this stage, if this appeal is remanded for issuance of duly approved/signed EIA afresh, on the ground that the re-issued approval is illegal and unlawful due to the earlier issued approval, or if this appeal is dismissed on the ground that it ha's become

infructuous due to the newly issued approval, having not been challenged and still exists holding the field, it would be against substantial justice in either way. Therefore, we find in the light of the case law specially the case reported as 2003 SCMR 318 which is already reproduced in para 33 above, that a heavy duty is cast upon the courts to do substantial justice and not to do the same on mere technicalities. Accordingly, this appeal on the sole issue of controversial EIA approval, is fit one to be determined on its merits.

35. However, learned counsel for respondent No.2 further extended his arguments on another legal point contending that the parties are bound by their pleadings and cannot set-up a new case which has not been pleaded in memo of appeal. In support of it he relied upon the case of Muhammad Yaqoob v. Mst. Sardaran Bibi and others (PLD 2020 SC 338) which was a suit filed by respondents Mst. Sardaran and others for declaration seeking confirmation of their title to the extent of their share and for cancellation of oral sale mutation. But the written statement filed by appellant was completely silent with regard to essential details of oral sale transaction and there was also no mention of the value at which the land was allegedly purchased by appellant. It was therefore held at paragraph 8 that: "It is settled law that a party is not allowed to improve its case beyond what was originally set up in the pleadings." He also referred paragraph 9 in the case of Moiz Abbas v. Mrs. Latifa and others (2019 SCMR 74) wherein also it was held that: ".....it is settled law that no amount of evidence can be considered on a plea of fact which was not raised in the pleadings by the parties." The above observations came when in a suit filed by respondent, no date, time, place or names of witnesses of alleged oral gift were mentioned in reply to notice, written statement or the suit, therefore, it was further observed that the, "Suits involving sales based on oral agreements are more susceptible to improvements made by parties in the evidence and pleadings in order to succeed". Thus both the above referred cases are very much distinguishable to the instant appeal. Learned counsel for respondent No.2 referring the provisions of Order XLI of C.P.C. also submitted that it bars the arguments on any additional grounds not pleaded in the memo of appeal. The relevant rules 1 and 2 of Order XLI, C.P.C. read as under:

"1. Form of appeal. What to accompany memorandum.---(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

(2) Contents of memorandum.---The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

2. Grounds which may be taken in appeal.---The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that grounds."

36. Learned counsel for appellants asserting that it is settled law that the memo of appeal provides key facts and not comprehensive facts, submitted that in para 7 of this appeal the appellants without any arguments or narrative, concisely stated the grounds of their objections to the EIA. The relevant part of such para 7 is reproduced below:

"7. The appellants attended public hearing and raised multiple objections on feasibility of the project, assessment, findings and recommendations in the EIA report. The appellants along with other concerned citizens and experts submitted comprehensive written objections on the EIA report. Copy of the objections is enclosed here as Annex. A-2..... "

He urged that the Annex. A-2 containing the objections of appellants and others on the project, were filed before the Agency at the time of public hearing and the same were also adopted and re-stated in the written synopsis of arguments which were filed with permission of this Tribunal and the same were fully replied by counsel of respondent No.2 through his written synopsis filed after seeking adjournments for four times. He further contended that the response to the objections of appellants, was also annexed by respondent No.2 with his objections filed on memo of appeal and contents of such response have also been re-produced by appellants in tabular form in their written synopsis. Accordingly, the written synopsis of arguments followed by oral arguments of the parties need to be considered on merits in the light of provisions of Order XLI of C.P.C. and so also para 90 of the judgment in Lahore Development Authority v. Ms. Imrana Tiwana and others (2015 SCMR 1739) which has been relied upon by both the contesting parties. Such para is as under:

"90. Further and more important is the fact that the impugned judgment has not recorded any objection to the EIA on its merits nor have the respondents highlighted any objection that has remained unattended and yet is fatal to the EIA. Moreover the statute provides an appeal to an Environmental Tribunal presided over by a retired judge of the High Court and second appeal to a Division Bench of the High Court itself. Neither of these remedies have been availed by the objecting respondents. We cannot strike down the EIA upon a mere presumption or apprehension." (Emphasis added).

37. On merits of this appeal, learned counsel for appellants referring various news reports and news clippings which are lying annexed with his written synopsis, emphasized that at the time of public hearing held on 09.03.2022 not a single participant favoured the construction of Malir Expressway on the right bank of Malir River and the participants who unanimously rejected the project, warned the Government of severe flooding that will become a regular occurrence in the region after the construction of project which was to serve only the elite class. He urged that most of participants were residents of ancient Goths located in Malir outskirts of Karachi and a number of farmers who own agricultural land in the proposed path of Expressway also attended and so also some independent experts were also present to highlight the aspects that had not been properly covered in the EIA report. He argued that the demolition of scores of homes was also done to make way for the project and in this regard the villagers had already protested and opposed the construction crying that it would demolish their oldest villages, displace a large number of people and destroy their cultivation. He also referred the objections which were filed on 09.03.2022 during public hearing and adopted in written synopsis, that after displacement of local residents of the area the construction of project was started prior to public hearing. He therefore stressed that the project endangers a vibrant ecology, historic agricultural community, a Sindhi Baloch Library of books and manuscripts not found elsewhere, the river belt of Malir River, the natural drainage and oxygen center of Karachi, a city that faces regular urban flooding, and that the respondents have shown a clear disregard to the law and fundamental rights of those displaced persons or otherwise affected by project and there is no doubt as to more risks, damages and irreparable losses that will certainly be experienced if this project is allowed to continue.

38. The contention of learned counsel for respondent No.2, on the other hand. is that the appellants have alleged the violations of fundamental rights without explaining as to how the same are infringed by impugned approval. He referred to page ES-2 of the EIA report contending that its paragraphs D(a) adequately describes how the rapid increase in population has put a lot of pressure on the infrastructure of City due to which the Corridors already existing, are highly congested and in case this project is not completed it would result in worsening of present traffic conditions, environmental, social and economic implications to the road users of Karachi and thus the project cannot be for the elite as alleged, as it is aimed to relieve traffic from the city. He further contended that appellants have made a blanket submission that the EIA report disregards ecological well being without making any reference to it, whereas the Chapter-V of EIA report comprehensively describes the nature of environment in the project zone taking into account numerous factors including topography, water resources, sewerage system, flooding, climate, habitation, flora, trees, mammals, birds etc. and the Chapter-VII comprehensively describes not only the impact the project would have to specific heads of environment but also mitigation steps that will be taken, while Chapter-IX also

comprehensively lays down an Environmental Management Plan to cater for the future environmental concerns. He also contended that even otherwise, by construction of Malir Expressway the Malir River will not be closed nor it will become useless to face the rainy or flood water to smoothly flow down into the sea.

39. In continuance of and in relation to the above arguments, the parties' counsel also argued on the doctrine of public trust and precautionary principles. According to learned counsel for appellants, the environment is a public trust therefore precautionary principle must be applied and the doctrine of public trust rests on the principles that certain resources like air, sea, water and forests have such a great importance to the people that it would be unjustified to make them a subject of private ownership. He added that these resources being a gift of nature should be made freely available to everyone and the government is liable to protect the same for enjoyment of general public rather than for private ownership or commercial purposes. In support of above, he placed reliance on the cases reported as 2007 CLD 1358, PLD 2014 Sindh 511 and PLD 2011 Karachi 132. In the first reported case regarding Muhammad Tariq Abbasi and others v. Defence Housing Authority and others (2007 CLC 1358-Karachi) it was observed at para 22 that:

"..... All over the world, beaches and waterfronts have been developed but in a manner so as to allow free access to the same by the public and so as not to obstruct a view of the beach and the sea. Consequently, the DHA may develop its property; however, this should be done keeping in view the aforementioned considerations, which have been judicially recognized as such. In this regard, it would be seen that the doctrine of public trust has long been recognized all over the world, which enjoins the State to preserve and protect the public interest in beaches, lakeshores etc... ... ... Finally, this Court in the case of Sindh Institute of Urology and Transplantation v. Nestle Milkpak Ltd 2005 CLD 424 has recognized the public trust doctrine extending it to natural resources, viz, air, sea, water and forests, which being a gift of nature should be made freely available to everyone irrespective of status ....."

In Pakistan Defence Officers Housing Authority v. Federation of Pakistan through Secretary, Ministry of Environmental Protection and 6 others (PLD 2014 Sindh 511), the IEE approval accorded by Agency to KMC for construction of a project was questioned by DHA, however the High Court directed KMC for submission of an EIA for consideration of Agency. In such reported case at para 25, a reference to the observation of the Supreme Court in relation to doctrine of public trust and precautionary principle was also made in a case i.e In the matter of cutting of Trees, Canal Widening Project Lahore (2011 SCMR 1743). The relevant passage of para 54 of such case is re-produce below:

".....The issue which underpins the project under challenge related to traffic congestion, the widening of the Canal Road and the

apprehended damage to ecology and environment. The Court would have intervened if the issues of rising traffic flow and congestion had not necessitated remedial measures; if feasibility of other alternative proposals had not been examined by the concerned department; if it had not got conducted Environmental Impact Assessment from a consultant and if the Environmental Protection Authority had not given environmental clearance after taking into consideration the relevant factor; if the doctrine of Public Trust or of Precautionary Principle for Environmental Protection was being violated or if the respondent-Provincial Government had not wholeheartedly accepted the Mediation Committee 's report which inter alia recommend declaring the greenbelt on both sides of the Canal as Heritage Park and had recommended only a partial widening of the road in question. These concerns, in our view have been adequately addressed by the competent bodies under the law..... ".

40. On the other hand, learned counsel for respondent No.2 urged that the appellants have failed to explain the applicability of Precautionary Principle to the Project or the EIA, rather the project has been up-keeping the precautionary principle by creating a public road available for the public to cater to their needs and ease their hardships and that the Act, 2014 has not been enacted to put a blanket stop to any project which may have an environmental impact but so as to ensure that those projects are undertaken in a manner to mitigate and restrict environmental impact and this is why the IEE and EIA are considered and the role of the Agency is only to ensure that least environmental impact is caused. He further emphasized that it is possible that a project may cause significant environmental impact however, where the same is necessary for the infrastructure of the city and the environmental impact is mitigated to the best extent, the environmental laws would not function so as to shop that project. On the citations relied upon by appellants, he submitted that in 2007 CLC 1358 the issue pertained to free access of pubic to a beach while Malir Expressway is a public road and can be used by all members of public, hence the citation is inapplicable and even otherwise, it does not support the applicability of Precautionary Principle. Whereas in PLD 2014 Sindh 511, he submitted, the issue pertained to submission and approval of an IEE where an EIA was required and the public participation was not undertaken as a result leading to eventual decision and whereas in the instant case public participation has been undertaken, so this citation is distinguishable and also does not support the applicability of Precautionary Principle.

41. A perusal of impugned EIA approval reveals that the approval was accorded subject to the following conditions:

5-i) All mitigation measures recommended in EIA report will be complied with, for achieving negligible impacts on physical, ecological, environmental and socio-economic settings along the alignment.

ii) Continuous monitoring of environmental and social parameters will be ensured provided in the contents of Environmental Management Plan (EMP).

iii) Proponent will appoint an Independent Monitoring Consultant (IMC) in consultation with Sindh EPA, whose responsibility would be to monitor the compliance of Environmental Monitoring Plan as laid down in EIA. The IMC will ensure that the construction activities of the expressway are undertaken in environment friendly manner and the mitigation measures are implemented as per the recommendations of EIA. The proponent will be liable to submit monthly monitoring reports produced by IMC. The report shall include pollutants measurement and analysis reports along with photographic records showing therein the environmental and social conditions of the project.

iv) The proponent shall obtain approvals of all other concerned departments and utility organizations before commencement of work at project site.

v) The project would be scheduled to avoid heavy rainfall periods to the extent practical to avoid flooding of construction sites and roads.

vi) The project will ensure that the hydrology of the Malir river, and the drainage patterns of the city, where the river serves as one of the stormwaters drains of the city, are not altered, through appropriate provision and adequate design of structures.

vii) Construction alignment shall be barricaded with any suitable material for safety of people residing on nearby vicinities and dust emissions will be controlled throughout construction period through frequent water sprinkling.

viii) The construction noise shall be monitored on regular basis. Noise and smoke emitting machinery shall be subjected to regular maintenance to strictly control noise and smoke emissions.

ix) The proponent shall ensure that a joint work plan is developed in consultation with all utility agencies for shifting and rehabilitation of utilities. It will be ensured that the locals should not be affected due to the disruption of utilities especially electricity and water.

x) Proponent will ensure provision of emergency response centers and medical facility at both sides of alignment for immediate and urgent relief in case of accidents. Collaboration will also be ensured with organization like Edhi and Chippa foundations for immediate relief in case of accidents or emergency situations.

xi) Construction of road and interchanges will be designed and built as per international standard in terms of quality of material and facilitation to commuters. Interchange at place of toll structure would be widened to avoid delays and waiting of vehicles.

xii) Traffic management shall be undertaken seriously to restrain traffic jams that may cause annoyance to the commuters travelling on the roads along the project alignment. Traffic management and diversion plan shall be prepared in consultation with traffic police and other relevant authorities and shall be submitted to this office before the start of construction activities. Traffic management plan shall also cater the pedestrian movement. Sign postings, warning signs, diversion signs and barriers shall be installed to alert public of all potential hazards.

xiii) The proponent will notify locals in the area prior to commencement of works, including diversion plans/routes and approximate construction t imelines.

xiv) The proponent shall redress the objections/concerns of neighboring residents, shops keepers and commuters on priority basis (if any at any stage). Proponent shall develop a Grievance Redress Mechanism (GRM) to ensure resolution of complaints from communities. A register shall be maintained of all complaints received, alongside how the complaint was resolved amicably alongside the redressal timeline.

xv) Proponent will ensure three rows of tree plantations on each side of the expressway for enhancement of aesthetic value and biodiversity at the entire alignment.

xvi) Any, and all land acquisition that must be undertaken for this project, shall be done in a transparent manner and as per the procedures defined in the Land Acquisition Act, 1894. Records shall be maintained of land acquisition carried out, alongside compensation(s) paid to landowners.

xvii) Camp sites shall be selected at a proper distance from the residential areas, where the Proponent shall ensure that campsites do not require permanent land acquisition and are not currently being used for any other purpose i.e., land to be used for the construction camps is barren. Furthermore, the Proponent will take proper measures for the treatment of wastewater and solid waste management originating from these campsites.

xviii) Campsite wastewater will not be released in sewers until it meets the SEQS limits. If water is released, then it will regularly be tested to ensure compliance with SEQS.

xix) Proponent will ensure installations of lights preferably solar lights on both sides of shoulders of entire alignment for safety of commuters.

xx) Appropriate pollution control devices to be installed and maintained in equipment and areas which may serve to be extended sources of pollution e.g., the asphalt plant, stone crushing units, etc. that will be deployed for the project, to ensure that harmful emissions are not released directly into the atmosphere.

xxi) Proponent will ensure provision of fuel/gas station at appropriate distance at both sides of the alignment for facilitation to commuters. Also arrangement of washrooms/toilets will be ensured.

xxii) The proponent shall ensure that no unfortunate incident(s) are caused due to construction and operation of project. The cost of damage to the environment, property or life of the people/ workers shall lie on the proponent. Any damage caused-to any existing structure due to construction of project shall be fully compensated by the proponent.

xxiii) The Proponent shall submit an undertaking for compliance of all the issues during construction of expressway, which includes but is not limited to the traffic management, existing utilities rehabilitations, construction waste management, coordination with local authorities, reconstruction of existing roads as per plan, emergency response, GRM, safety and security of residents and commuters, and the requirement of independent environmental and social monitoring through an IMC.

xxiv) The proponent shall facilitate EPA Officer(s)/Official(s) as and when required for inspection of compliance status against the provisions of Sindh Environmental Protection Act, 2014, rules and regulations framed there under and the conditions laid down in this approval.

6. This approval shall be treated as null and void if the conditions mentioned in this approval are not complied with or any violation of SEP Act, Rules, Regulations, Guidelines and instructions there under is committed by the proponent or his/her agent or employee.

7. The approval is accorded only for the project activity described in the EIA report. Proponent shall submit separate EIA or IEE as required under regulation for any enhancement or change in the design or location of project.

8. The proponent shall be liable for compliance of sections 11, 12, 13, 14, 17, 19 and 20 of Sindh Environmental Protection Act, 2014.

9. The proponent shall be liable for compliance of sections 14, 15, 18, 19 and 20 of Environmental Assessment Regulations, 2021, which direct for condition for approval, confirmation of compliance, entry inspection and monitoring.

10. This approval does not absolve the proponent of the duty to obtain any other approval or consent that may be required under any law in force.

11. That, this approval is not valid for any Court matter/land dispute.

42. We have considered the submissions of the parties in the light of relevant law and available record.

43. Through this appeal, the EIA approval accorded by the Agency to the Proponent for construction of Malir Expressway project, has been challenged by appellants. This approval is subject to numerous conditions (total 30) which are reproduced in para 41 above. Accordingly, such approval is conditional one. It appears that most of the environmental issues are addressed in such conditions, the compliance and implementation of which is the responsibility of the respondents. However, the main objection of appellants raised earlier during public hearing, and now adopted in their written synopsis of arguments, is on the risk of urban flooding due to construction of the project on Malir river. They have stressed that the part of Expressway is being built on riverbed instead of its right bank and, though the EIA report mentions that over-head bridges, box and pipe culverts will be constructed to allow the water to flow but this does not take into account the structural integrity of these structures during heavy rains and urban floods. In response to it, the submission of respondent No.2 is that the Expressway is being built on the right bank of the river and not inside it and the protection will also be provided to the development and population in the right bank and, for protection of left bank, a deep-sea drain is being incorporated into the project to withstand the heaviest of rains and divert the water out to the Arabian sea. On the effect of change in the hydrology on project affectees, the respondent No.2 submitted that four main arteries/nullahs will not be disturbed in the project where Expressway will employ the form of flyover bridge to avoid any change in the hydraulic regime in project area. In this connection, the condition 5(vi) of the approval reads as follows:

"The project will ensure that the hydrology of Malir river, and the drainage patterns of the city, where the river serves as one of the stormwater's drains of the city, are not altered, through appropriate provision and adequate design of structures."

In addition to above, the appellants' counsel also contended on the usage of groundwater resources for project activities, that such water is the only source of agriculture being utilized by the people of local area. This was however clarified by the Agency that the water needs for the project would not be extracted from Malir river but such requirement will be met out through tanker service during the construction. It appears that the apprehensions of appellants mentioned above, need due attention of respondent No. 2 therefore, the aforesaid submissions and undertakings of respondents as well as all the conditions imposed by respondent No. 1 in EIA approval and so also the proposals/suggestions/recommendation/ undertakings made by respondent No.2 in its EIA report including Environmental Management Plan (EMP), must be complied with and implemented by them in a way to save the project area and the affectees from further loss/damage and for this purpose, all possible mitigation and remedial measures must be adopted by respondent No.2 in compliance of the conditions 5(i), (ii), (iii) and (xxii) of the approval and in this regard, the Regulation 17 of SEPA (Environmental Assessment) Regulations, 2021 clearly directs for

cancellation of approval if the conditions of approval reproduced in para 41 above, have not been complied with or that the information supplied by proponent in the approved EIA or EMP, is incorrect. Moreover, one of the stringent conditions as imposed in the approval, also provides that:

"6. This approval shall be treated null and void if the conditions mentioned in the approval are not complied with or any violation of SEP Act, Rules, Regulations, Guidelines and instructions thereunder, is committed by the proponent or his/her agent or employee."

44. The next contention of learned counsel for appellants, however, carries force in respect of the construction activities of the project, having badly affected so many persons who are either displaced from their properties, houses, shops, etc. which as well as other structures have been demolished, or they are ejected from their agricultural lands, etc. and their cultivation, crops, tress, etc. are destroyed, or they are dislodged from their established business and sources of livelihood, and yet no step has been taken for their re settlement/re-establishment/ rehabilitation and/or compensation, etc. despite such conditions imposed in the EIA approval at paras 5(xiv), (xvi) and (xxii). These conditions are reproduced below:

"xiv) The proponent shall redress the objections/concerns of neighboring residents, shops keepers and commuters on priority basis (if any at any stage). Proponent shall develop a Grievance Redress Mechanism (GRM) to ensure resolution of complaints from communities. A register shall be maintained of all complaints received, alongside how the complaint was resolved amicably alongside the redressal timeline.

xvi) Any, and all land acquisition that must be undertaken for this project, shall be done in a transparent manner and as per the procedures defined in the Land Acquisition Act, 1894. Records shall be maintained of land acquisition carried out, alongside compensation(s) paid to landowners.

xxii) The proponent shall ensure that no unfortunate incident (s) are caused due to construction and operation of project. The cost of damage to the environment, property or life of the people/workers shall lie on the proponent. Any damage caused to any existing structure due to construction of project shall be fully compensated by the proponent."

Apart from above, the condition 5(xxiii) is for the submission of an undertaking by the proponent for compliance of all the issues during construction of Expressway. Moreover, as per conditions 8 and 9 the proponent is also held liable for compliance of various provisions of SEP Act, 2014 and Regulations, 2021. Since the approval is subject to compliance of all conditions including the above, therefore, respondent No.2 is bound to comply with the same without any more delay. Accordingly, the respondent No.2 is liable to address

and redress the grievances of project affectees and in this connection the Grievance Redressal Mechanism (GRM) is already provided in detail in Chapter-8 of EIA report itself, which must start its functioning and take appropriate action so as to reduce the grievances of the people.

45. Whereas the overall object, necessity and importance of the project cannot be denied. The record shows that the purpose of this mega project/expressway is to provide support the bulk and heavy vehicles that transport goods from Karachi Port, PICT, KICT, Kiamari Terminal etc. to other parts of the country. The need for this Corridor was highlighted in the Traffic Master Plan prepared by Japan International Co-operation Agency (JICA) in 2012, titled as Karachi Transportation Improvement Project. After about 10 years, it is being executed by now to avoid heavy traffic from entering and clogging the main arteries of the city such as Shahrah-e-Faisal, Sahahrah-e-Pakistan, etc. These vehicles are currently using main roads and are combined with traffic of city, creating a compounded pollution effect, which will be reduced if the above bulk material transport is provided a separate bypass to access the rest of the country. The fact that on account of tremendous increase in the population, a rapid increase of ancillary vehicles in the city, has resulted in a lot of pressure on city's infrastructure and surrounding to it, therefore, the situation demands the construction of this Expressway to cater extreme need of the public at large. This project is not a private or commercial but is a public road and an initiative of Government of Sindh. The same is for the larger interest of general public and it will permanently bring the savings in terms of fuel and time of the public travelling to any place of the country. Even otherwise, to avoid unsustainable load on existing roads, specially of Landhi and Korangi industrial area, which are being used at maximum limit having no more capacity for expansion or enlargement, this project will certainly reduce huge burden at least from the roads of such area which has resulted in serious issue of traffic congestion as well as the heavy pollution. Thus, the observation of a Division Bench of Sindh High Court in a case already referred to above, reported as, PLD 2007, Karachi, 293 that the ".....development and environmental protection must progress together ....", is relevant to this case also.

46. While referring to various Articles of the Constitution of Pakistan, learned counsel for appellants also submitted that due to the construction of Expressway the valuable and fundamental rights of appellants and all affected persons, are flagrantly violated. In this connection, the relevant para 29 in the case of Ms. Salma lqbal Chundrigar and others v. Federation of Pakistan through Secretary, Ministry of Environmental Protection, Islamabad and others (2009 CLD 682-Karachi) as relied upon by learned counsel for respondent No.2, is reproduced below:

"29. Learned counsel for petitioners had referred to Articles 4, 5, 9, 14 and 25 of the Constitution of Pakistan, while stating that their rights as envisaged under the said Articles, were infringed due to

commencement of the construction of the flyover. There is no cavil to the proposition that the right of individual under the said provisions of the Constitution are protected. However, at the same time we cannot loose sight of the wake of the growing needs of the population, which culminate in the demand for greater number of roads, flyovers under passes, etc."

Similar is the position in this case. Consequently, we are not inclined to set-aside the EIA approval Or to stop the construction of the project which shall continue to be completed, like in the cases already referred to by the parties, which are reported as 2015 SCMR 1739, 2011 SCMR 1743, PLD 2007 Karachi 293, 2007 CLC 1358-Karachi and 2009 CLD 682-Karachi.

47. However, at the same time, we are conscious of the fact that the damage of any kind caused and is being caused to the people of project area and surrounding to it, and the loss of any type already sustained and is being sustained by project affectees, and all other issues concerning to the environment and socio-economic related matters, having been arisen due to construction of the project, cannot be left unattended without redressal of the grievances and implementation of the same. So, in this connection, a Complaint Redressal and Implementation Committee (CR&IC) shall be constituted/notified within one month, by the Government of Sindh, to be headed by a Senior Officer at least of BPS-20 as Chairman of such Committee, and the Officers not below the rank of BPS-19 as its members, to be taken from relevant departments such as Environment, Climate Change and Costal Development, Revenue, Forest and Wildlife, Agriculture, Local Government, Culture, Tourism and Antiquities, Provincial Disaster Management Authority, Sindh Environmental Protection Agency, etc. The Project Director as well as a representative of respondent No.2, a representative of appellant party, the representatives of respective communities/villages (one from each) of the project area, etc. shall also be the members of such Committee, which will hold monthly meetings for the purpose as follows:

a) To consider the grievances/complaints of the affectees of Malir Expressway project, redress their grievances and implement the same through appropriate forum.

b) To examine monthly progress reports of project based Grievance Redressal Committee (GRC) constituted under Chapter-8 of EIA report and Independent Monitoring Consultant (IMC) appointed in terms of Condition 5 (iii), (xiv), (xxiii) of the approval, which reports shall be submitted by respondent No.2 regularly, on which necessary directions for due/further compliance, may be issued by the CR&IC.

c) To examine monthly progress reports regarding the Inspection of project site and Verification of the matters enumerated in the conditions of EIA approval reproduced in para 41 above, which reports shall be submitted by respondent No.1 regularly, on which

necessary directions may be issued by CR&IC for due compliance and implementation of such conditions of the approval as well as the EIA report, in the light of which the approval was accorded.

d) To implement the undertaking furnished by respondent No.2 as per Condition 5(xxiii) of the approval and Regulation 14(2) of SEPA (Environmental Assessment) Regulations, 2021, and also to enforce its other proposals/suggestions/ recommendations/ undertakings, directly or indirectly made in its EIA report, Environmental Management Plan, Conditions of the approval, directions of this Tribunal as per paras 43 and 44 above, and further directions to be issued from time to time by the CR&IC.

e) To recommend/advice/direct the respondent No.1, as per Condition 6 of the approval as well as Regulation 17 ibid, for taking necessary action against respondent No.2 and cancellation of EIA approval, in case the respondent No.2 is found to have violated or not complied with the terms, conditions and directions as mentioned in clause (d) of this para.

48. Accordingly, this appeal is hereby disposed of in the above terms, with no order as to the cost. Let the copy of this judgment be sent to the Chief Secretary to Government of Sindh for necessary action in terms of para 47 above.

MH/1/SET Order accordingly

Case: 20 Rindz Mari

2021 C L D 1195

[Sindh (Sukkur Bench)]

Before Aftab Ahmed Gorrar and Fahim Ahmed Siddiqui, JJ

RINDZ MARI and others---Petitioners

Versus

PROVINCE OF SINDH through Secretary Mines and Mineral Development Department, Karachi and 8 others---Respondents

Constitutional Petition No. D-185 of 2020, decided on 27th May, 2021.

Date of hearing: 20th April, 2021.

ORDER

FAHIM AHMED SIDDIQUI, J.---The petitioners are the villagers and they are aggrieved with the act of respondent No. 9 for dynamite blasting and mining for limestone, which was made large or small fragment (commonly known as crush) through a mechanized crushing plant. Respondent No. 9 has started such activities under the license/lease granted by the official respondents belonging to the Mines and Mineral Development Department (hereinafter referred as Mines Department). The grievance of the petitioners is that due to such mining and crushing activities, the life of villagers is disturbed and disrupt as dust particles are scattered and hovered in the air and impaired the air quality, while rock pieces are fallen upon the village. The petitioners claiming that since such activities are environmental hazards for the villagers, therefore, the same should be stopped.

2. Mr. Ali Raza Baloch, while articulating his arguments, draws attention towards different documents indicating that the mining permit was issued in favour of one Asif Khan. He submits that actually in the field respondent No. 9 i.e. Najeebullah Khan is doing all the job of blasting and crushing the rocks. He submits that even the conditions laid down in the mining permit were violated as it is mentioned that through such activities the leaseholder has to prevent hazards to human or animal life or the property of others and the environments. Mr. Baluch further points out that the report of the Additional Registrar of this Court indicates that fresh mining activities were observed on or around 18.11.2020, which means that respondent No. 9 has also violated the restraining order of this Court. He further submits that as per lease holding rights, respondent No. 9 may collect limestone but he is not allowed to install or establish a factory or crushing plant, which adds up to the miseries of the petitioners as the entire area becomes dusty due to such activities.

3. Mr. Qurban Ali Malano, representing respondent No. 9, submits that no village or human settlement is ,available close to the mining field. He submits that the purpose of such mining activities is to prepare building materials like ballast and crush for which installation of a crushing plant is necessary. According to him, such activities of respondent No. 9 do not cause any harm to the environment as the same is not troublesome for the petitioners in any manner. While closing his arguments, Mr. Malano submits that by filing such a petition, the petitioners are not only causing business loss to respondent No. 9 but also depleting the public exchequer revenue.

4. Mr. Ahmed Ali Shahani, the learned AAG, submits that the license or lease was granted but such permit does not speak about the installation of a crushing plant and the same does not fall under the domain of the Mines Department. According to him, for the same purpose, respondent No. 9 has to obtain permission from Industries Department, which was not done. He further submits that this aspect has now come to the limelight and now the provincial government intends to remove this hurdle by proposed legislation whereby Mines-Department will be able to take care of such a situation by-issuing permit for crusing plants. However, Mr. Shahani frankly concedes that since requested permission or license has not been sought by respondent No. 9 from the Industries Department and avoiding the requisite fee/charges; therefore, respondent 9 should not operate crusing machines till such permission is obtained.

5. We have heard the arguments advanced and have gone through the available record. In this matter, a mining lease of a considerable piece of land was granted by the Mines Department to Asif Khan, and respondent No. 9 might be sub-lessee or, his agent, who is engaged in the actual mining activities of limestone. These types of mining are known as surface mining and also referred as limestone quarries from where for collecting or recovering limestone, the miners are not required to go deep underground since the limestone is recoverable from the surface areas of mounds and hills for which instead of manual labour, the quarry operators usually prefer to blast the portion of mounds or hills through a stick of improvised dynamite. It is worth noting that blowing out some portion of such hilly structures through this type of blasting is not safe for the workers as well as nearby residents. The reason is obvious that it may not only cause some serious misfortune for them but also the tiny particles of dust remained suspended in the air, which is ultimately causing serious health issues for the workers -and nearby residents. From the reports available in the record, it is evident that the village of the petitioners is close enough from the mining area, as such the apprehensions of the petitioners regarding environmental degradation cannot be disregarded. Respondent No. 9 is not only cutting and blowing the stony mound and hills for collecting limestone but also he has installed a crusher plant for crushing the limestone to make ballast and -- crush and such plants produce a

huge amount of dust, which makes the air quality of surrounding area injurious for human and livestock. It is also badly affected the wildlife including flora and fauna. Another aspect of the case is important that in the leasing document, nowhere it is mentioned that the lease right holder is authorized to install a crushing plant. We are of the view that a crushing plant falls under the category of a factory, as such its establishment requires certain other formalities, licences, and permission. During arguments, it has been admitted that no such permission or license from the relevant department was obtained by respondent No. 9 or his master i.e. Asif Khan to whom the lease was granted.

6. In Sindh, the stone crushing industry is dominant but unfortunately, it is still an environmentally unrecognized sector of industrial activities. 'Usually, such industries are installed nearby the limestone quarries without considering and employing measures for maintaining air quality. It is worth noting that different operations involved in stone-crushing industries, which may cause - significant environmental impacts including air and noise pollution in the vicinity as well as vibrant effects in the far-off areas. Environmental and medical experts admit that the exposure of the human body to any kind of dust for a longer period may cause harmful effects through inhalation, ingestion as well as by skin and eye contact depending upon the physical and chemical properties of dust and its source. Crushed limestone dust is a waste material from the production of concrete aggregate by crushing quarreled limestone rocks. Limestone dust is composed mainly of calcium carbonate ($CaCO_3$). It may contain a considerable amount of magnesium carbonate (dolomite) as well as certain other constituents like clay, iron carbonate pyrite and quartz[1], and all these chemical components may cause serious damage to human health. We are well aware that the stone-crushing industries are necessary for several allied industries. These industries provide the raw material for the construction of roads, buildings, bridges, and railways. At the same time, it provided the livelihood for skilled and unskilled labourers employed at different stages of a stone crushing process like drilling, blasting and collecting rocks, leading stone-rocks up to the crushing plant, crushing, screening, size classification, material handling, storage, and transportation operation of the finished product up to its destination. However, we are equally cognizant that such type of mining operations and crushing industries cause significant emanation of suspended particulate matter (SPM) in the atmosphere, as such if permission is granted the same should be subject to considering all the factors of sustainable development and surely not without the proper environmental impact assessment (EIA) as well as public hearing as per provision of section 31 of the Sindh Environmental Protection Act, 2014 (hereinafter referred as 'SEPA'). The stone quarries fall under the definition of a project as mentioned under section 2(xlii) of SEPA and as per provision of section 17 of SEPA the construction or operation of a project cannot be commenced without involving the Environmental Protection Agency through an application for Initial

Environmental Examination (IEE) or Environmental Impact Assessment (EIA) and thereafter approval of the Agency is necessary for the execution of such project. It is evident that this process has not been followed by respondent No.9 and unfortunately Mines Department has also overlooked the same, which in our view is criminal negligence by the official respondents and the same may be answerable as per provision of section 24 of SEPA.

7. Now another aspect needs our attention. As explained above, the mining activity of limestone is limited to the upper surface of the earth for which no deeper excavation and proper formations of underground mines are needed. Although, limestone is not a precious or semi-precious stone; at the same time it is not a valueless item. It is an important raw material for cement manufacturing while it is also used in some other industries. It is a comparatively soft stone, as such crushing _units prefer to transform the same into building aggregates for using in the concrete mortar instead of using gravels or other hard stones. We consider that when gravels and other stones are available for concrete aggregates, the Mining Department should be careful while giving leases and preference should be given to limestone mining for industrial purposes. Nevertheless, being surface mining, the mining of limestone is an entirely different process. It is not equivalent to the process of oil exploration or exploration of precious or semi-precious metal or materials. It does not require any exploration as the limestone can easily be detected and estimated without applying any sophisticated equipment. The Mines Department's representatives have placed on record, a complete map of the province indicating areas of availability of limestone while the Mineral Map of Sindh indicating areas of different sorts of mineral resources is also available on the website of the Mines Department[2]. From the website of the Mines Department, it is revealed that usually limestone and other surface minerals licences are issued for so-called small-scale minings for 50 acres only. The categories of the mining activities or mining concessions are mentioned as under[3]:

Mining Concessions

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Mainly two types of Mining activities are carried out through the department i.e. Small Scale Mining and Large Scale Mining.

SMALL SCALE MINING

Sr.No	Type	Period	Renewable	Area
1.	Exploration Permit	One year	Ten years	50 Sq. Kms (Max)
2.	Mining Permit	Ten years	Ten years	50 Sq Kms. (Max)

3.	Quarry License Limestone. Ordinary Stone, Gravel, Reti/Barji, ordinary sand morum.	One year	Yearly basis	50 Acres (Mas)

LARGE SCALE MINING

Sr. No.	Type	Period	Renewable	Area
1.	Reconnaissance License	One year	Renewable	100 sq. Kms (Max)
2,	Exploration License	Three years	Upto seven years	100 sq. Kms (Max)
3,	Mineral Deposit Retention License Eligibility: Explanation license holder	Two years	Renewable for one year	Area can be reduced
4.	Mining License	Thirty years	Renewable	

8. Respondent No. 9 appears to be a small-scale mine or quarry operator under such permits. It .appears that respondent No. 9 was granted such a licence only on his application. So far as royalty is concerned, the same is also collectible either from respondent No 9 or from those, who are removing the minerals from the mines but the record is silent about the payment of royalty. The exploration of minerals certainly pertains to those minerals which are situated underneath the surface of the earth but for the purpose of surface minerals, no exploration activities are needed. Nevertheless, from the above schedule of mining concessions, it is clear that exploration and mining permits are a different category to the quarry licences, which may be given without any exploration permit, which is otherwise necessary for large-scale mining activities.

9. It is worth noting that the Revenue Department is the custodian of the record of all the government lands. Hence, while issuing licences or concessions, the Revenue Department should "be taken on board and the land given for exploration of minerals or licenses for mines and quarries should be properly measured and marked. However, in the present case, it appears that the said procedure was also not followed, and perhaps the similar is the situation for the licences of other stone quarries as well as other surface minerals. Besides, the procedure for licensing is also questionable. We are of the view that the licensing for exploration of minerals is no doubt needs some technical and geological expertise for which an application ought to be processed differently by ascertaining the qualification of the prospective applicants. Moreover, a prosperous applicant, after investing in exploration in a licensed area, actually adds up in the resources of the country. However, the adoption of the same procedure for surface mining like stone quarry is surely not needed such evaluation and analysis, and before applying for such licence, the prosperous applicant is well aware not only about the availability of stone, sand, and other surface mineral and after

applying and in some cases after greasing the palms of some of the officials, he can get the mining rights on a very meager licence fee which in present case Rs.10,000/- (ten thousand) only. Under the garb of such licence fee, the licensee can remove the limestone and other stone from hilly areas, which were used in the making of crush and other building materials. Such licences are extendable and usually continuously extended until the entire hills are flattened rather than converted into a ditch or pit. It appears that the present procedure adopted by the Mines Department for issuing the licence to the operators of stone quarries and/or mines of other surface minerals is not transparent and it opens the venue of corruption and favoritism. We consider that the proper procedure for all the surface minerals mining activities shall be an open auction so that the prosperous applicants may compete and get the licence for exploitation of surface minerals.

10. Now we would like to address the installation of crushing units nearly at all the stone quarries in Sindh. These mechanized crushers crushed the huge rocks into the aggregate of small fragments locally known as crush and used as an important building material. These fragments of rocks are made with mechanized crushers, which produce a lot of air and noise pollution while working. It is unfortunate indeed that these crushers are usually installed within or nearby the stone quarries and in some within the vicinity of a highway or human settlements. Through wet-crushing, the dust produced could be minimized while the manufacturers of these crushers have also introduced different types of Dust Collectors to be attached with the crushing machines so that pollutants may not spread in the atmosphere but in the country, all these crushing machines are being used without Dust Collector installed or attached with them. Besides, it is necessary that before allocating a site for stone quarry, an Initial Environmental Examination (IEE) and subsequently an Environmental Impact Assessment (EIA) should be done by SEPA after the public hearing but the said procedure has never been followed. It is also necessary that the area allocated to the operators of quarries should be properly demarcated for which the revenue authorities should also be involved and without NOC from the Board of Revenue, no new quarry for surface mineral should be given to prospective operators. Consequently, we crystalized the entire matter in the following terms.

i. The permit/ licence issued in favour of respondent No. 9 by the Mines Department regarding the limestone quarry adjacent to the village of the petitioners is set aside by declaring that the same was established without fulfilling the necessarycodal formalities.

ii. The crushing machine/plant functioning at or nearby the said quarry is also declared as illegal, as the same falls under the definition of a factory and it was also working without proper permission obtained according to sections 5 and 5-A of the Factories Act, 1934, as such the respondent No. 9 is directed to

remove the same within 15 days and in case of failure the

Deputy Commissioner concerned is directed to remove the same on the expenses of respondent No. 9.

iii. The Deputy Commissioners of all the districts in Sindh are directed to issue notices to all the crushing plants and machines installed and operating in their jurisdiction within or nearby a some quarry and with directions to get relevant permits/licences issued by the relevant departments of the ministry of industries within three months thereafter no crushing plant/machine should be allowed to function without permit and license and all such plants and machines should be removed by district administration.

iv. Nevertheless, installation of such crushers or crushing plants may only be done keeping in view of the requirements of sustainable development as envisaged under the Sindh Environmental Protection Act, 2014 and rules made thereunder but under the permits/licences issued as provided under sections 5 and 5-A of the Factories Act, 1934 after fulfilling all the codal formalities, rules and regulations.

v. The Government of Sindh is directed to issue directions/ notification under Section 5 read with Section 16 of the Factories Act, 1934 for making it mandatory that all the Crushers, Crushing Machines, Crushing Plants operating /working within the province of Sindh should make proper arrangements for removing or minimizing dust by using wet-crushing technology or installing proper Dust Catcher within a period of six months.

vi. The Deputy Commissioners of all the Districts in Sindh are directed to submit a list of all the surface minerals mines and quarries in their districts to the Director-General, Sindh Environmental Protection Agency (SEPA), who shall conduct Environmental Impact Assessment and furnish a report to Deputy Commissioner and Mines Department with suggestion regarding the operation of such mines and quarries. In case of-a negative EIA, the Deputy Commissioners are directed to close such activities immediately. The Mines Department is directed to cooperate with the Deputy Commissioner and SEPA.

vii. The Mines Department is directed to allocate the surface minerals mining permits to prospective mine and quarry operators for surface minerals by auction while all those mining permits for stone quarries and mines pertaining to any sorts of surface minerals should be canceled, if not allocated to mines and quarry operators without any open auction or bid.

viii. The Mines department is directed to get the area of Mines and Quarries of surface mining demarcate with the help and assistance of Revenue department while Deputy Commissioners are directed to make sure that no mine or quarry operator is allowed to operate beyond allocated area.

The instant petition is disposed of in terms of the above observations and directions.

MH/R-10/Sindh Order accordingly.

Case: 21 Messrs Iqbal Mining Co

2022 C L D 1473

[Lahore]

Before Shahid Jamil Khan and Ahmed Nadeem Arshad, JJ

Messrs IQBAL MINING CO. through Partners and 6 others---Appellants

Versus

PUNJAB ENVIRONMENTAL PROTECTION AGENCY and 4 others---Respondents

Environmental Appeal No. 18780 of 2019, heard on 18th January, 2022.

Date of hearing: 18th January, 2022.

JUDGMENT

AHMAD NADEEM ARSHAD, J.---Through this appeal under section 23 of the Punjab Environmental Protection (Amended) Act, 2012 appellants Messrs Iqbal Mining Company and others (appellants) have challenged the vires of judgment/order dated 25.02.2019 passed by the Punjab Environmental Tribunal, Lahore (appellate tribunal). The operative para of which is reproduced as under:-

"Riffat Iqbal also filed a Writ Petition No.13919 of 2014 titled Riffat Iqbal v. Secretary Mines and Minerals Department, and others and Hon'ble Lahore High Court, Lahore vide judgment dated 28.01.2016 directed Director General Mines and Mineral to conduct a fresh inspection of the land of the petitioner to ascertain whether the water channel has been built and completed in terms of order dated 30.04.2012 and also conduct fresh analysis of the land of the petitioner with respect to soil fertility from approved laboratory and respondent No.1 should pass a final order in the light of the aforementioned reports. In compliance of the order of Hon'ble High Court, Lahore Director General EPA conducted a survey on 21.06.2016 and prepared lab report dated 30.06.2016 is available on record which reflects that Total Dissolved Solids (TDA), Total Suspended Solids (TSS) and Chlorides exceeded the NEQS. Therefore, EPA took cognizance of the matter and issued EPO. Whether the Secretary, Mines and Mineral passed any fresh order in compliance of the directions of Hon'ble Lahore High. Lahore is now known as no order passed by Secretary Mines and Minerals is available on record. EPO itself suggests that untreated waste water

of coal mine is discharged into local drain and low lying areas and piles of coal debris of mine and rain water may affect the nearby soil adversely. There is also violation of section 11 including 12 for not obtaining Environmental Approval/ submitting IEE in terms of Hon'ble Lahore High Court's direction.

15. Lab Analysis report of the waste water is also available on record. The compliance of the directions in the impugned EPO dated 20.04.2017 are simple and will improve Environment by controlling the pollution. In the circumstances impugned EPO dated 20.04.2017 does not need intervention by this Tribunal. Appeal is hereby dismissed."

2. Learned counsel for the appellants when confronted as to how appellants are aggrieved of the impugned judgment as suggestions contained in the letter/order of Deputy Director (R&D/Licensing Authority dated 20.04.2017 have been upheld by the Punjab Environmental Tribunal, Lahore with an observation that these measures would improve the environment by controlling the pollution of the area, he argued that under section 16 of the Punjab Environmental Protection Act, 1997 (Act, 1997) the Authority could have directed for mitigation instead of passing order for establishing treatment of solid waste management plan. He further argued that appellants started mining as per lease holding rights much prior to the promulgation of Act, 1997, therefore, condition of environmental approval contained under sections 11 and 12 of the Act, 1997 is not applicable upon the appellants.

3. Conversely, learned Assistant Advocate General while supporting the judgment of the Appellate Tribunal submits that direction of adopting measures as per section 12 of the Act, 1997 pertains to submission of IEE which is legal and justified. He further submits that renewal of the lease holding rights was obtained by the appellants on 29.09.1999 when environmental approval under section 12 was required. Further contends that lease holding rights had expired on 28.09.2019, therefore, appellants are no more lease holder under the mining laws, however, are continuing the mining of coal on the pretext of this appeal.

4. We have heard learned counsel for the parties at length and perused the record with their able assistance.

5. So far as first ground is concerned the mitigation as sought by learned counsel for the appellants is within discretion of the respondent department and is purely a technical issue. The object of environmental laws is to ensure protection of environment including soil from toxic material in the waste of any Project. This Court in appellate jurisdiction cannot replace the direction of the respondent department particularly when it could not be shown to have been passed in violation of any law. The direction for treatment of water through solid waste management plan, therefore, cannot be interfered with.

6. The spirit of section 16 is based on the precautionary principle which requires the relevant agency to anticipate the danger and take immediate steps to prevent harm or danger to the environment. In this eventuality section 16 of the Act, 1997 empowered the Environmental Protection Agency (EPA) with regard to measures to be adopted by the lease holder in order to protect the environment during the currency of his lease period. For facility of reference it is re-produced as under:-

"Environmental Protection Order. (1) Where the Provincial Agency is satisfied that the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or handling of hazardous substance, or any other act or omission is likely to occur, or is occurring, or has occurred, in violation of any provision of this Act, rules or regulations or of the conditions of a license, or is likely to cause, or is causing, or has caused an adverse environmental effect, the Provincial Agency may, after giving the person responsible for such discharge, emission, disposal, handling, act or omission an opportunity of being heard, by order, direct such person consider necessary measures as the Provincial Agency may consider necessary within such period as may be specified in the order.

(2) In particular and without prejudice to the generality or the foregoing power, such measures may include-

(a) immediate stoppage, preventing, lessening or controlling the discharge, emission, disposal, handling, act or omission, or to minimize or remedy the adverse environmental effect.

(b) installation, replacement or alteration of any equipment or thing to eliminate or control or abate on a permanent or temporary basis, such discharge, emission, disposal, handling, act or omission.

(c) action to remove or otherwise dispose of the effluent, waste, air pollutant, noise, or hazardous substances; and

(d) action to restore the environment to the condition existing prior to such discharge, disposal, handling, act or omission, as close to such condition as may be reasonable in the circumstances, to the satisfaction of the [Provincial Agency]

(3) Where the person, to whom directions under subsection (1) are given, does not comply therewith, the [Provincial Agency] may, in addition to the proceeding initiated against him under this Act or the rules and regulations, itself take or cause to be taken such measures specified in the order as it may deem necessary, and may recover the costs of taking such measures from such person as arrears of land revenue."

From the bare reading of this section, it is clear that direction qua solid waste management plan can be issued by the EPA. The order passed under section 16 of the Act, 1997 and upheld by the Appellate Tribunal is also re-produced below:-

"Now therefore, since you have not obtained required Environmental Approval from EPA, Punjab and your wells/pits are causing pollution. The Director General, EPA, Punjab, in exercise of powers, conferred under Section 16 of the Act ibid, do hereby pass the Environmental Protection Order (EPO) to take the following measures within 30 days:-

1. Immediately stop operation of the unit and take necessary measures to regularize the violation of section 12 of the Punjab Environmental Protection Act, 1997.

2. Take measures to treat the waste water of the unit in conformity with the PEQS and arrange its environmentally sound disposal.

3. The Nala/embankment already, made may be extended by 400 meters up to Majid Mines in order to minimize the chances of rain water entry (after percolation through coal wastes) into land of complainant.

4. Proper solid waste management plan must be implemented for early removal of deposited coal waste on the vicinity lands and arrange its environmentally disposal.

In case of failure to comply with direction of this Environmental Protection Order (EPO), you would be proceeded against under section 17 and other allied provisions of the Punjab Environmental Protection Act, 1997."

7. So far his contention of prosecution for not obtaining environmental approval under section 12 of the Act 1997 is concerned suffice it to say, that to initiate criminal proceedings, facts of each case are to be looked into by the prosecution agency. Suffice it to observe, if appellants plead protection under section 12 of the Act, 1997 the Prosecution Agency keeping in view the provisions of Article 12 of the Constitution of Islamic Republic of Pakistan, 1973 shall proceed with the matter and decide the same in accordance with law.

8. In view of the above, we do not find any merit in this appeal which is hereby dismissed.

SA/I-19/L Appeal dismissed.

Case:22 Syed Manzoor Hussain Gillani Of Azad Kashmir

2020 Y L R 771

[High Court (AJ&K)]

Before Muhammad Sheraz Kiani, Sadaqat Hussain Raja and Ch. Muhammad Muneer, JJ

Justice (R) Syed MANZOOR HUSSAIN GILLANI, CHAIRMAN, MUZAFFARABAD and 29 others---Petitioners

Versus

GOVERNMENT OF ISLAMIC REPUBLIC OF PAKISTAN through Establishment Secretary to Government of Pakistan, Islamabad and others---Respondents

Writ Petitions Nos. 1675 and 1744 of 2018, decided on 15th November, 2019.

JUDGMENT

MUHAMMAD SHERAZ KIANI, J.---The captioned writ petitions have been addressed under section 44 of the Azad Jammu and Kashmir Interim Constitution, 1974.

2. As common questions of facts and law are involved in both the writ petitions, therefore, the same were clubbed for onward proceedings and are decided through the instant single judgment.

3. Precise facts culminating into filing of Writ Petition No.1675/2018, are that petitioners are bona fide hereditary State Subjects of the State of Azad Jammu and Kashmir, having domicile of District Muzaffarabad. It is stated that Government of Pakistan through its outlet, Water and Power Development Authority (WAPDA) has undertaken the construction of different Dams throughout Pakistan, including Azad Jammu and Kashmir and Galgit Baltistan for Generating Hydroelectricity. The WAPDA has already constructed a Dam in Mirpur District i.e. Mangle Dam, which has a capacity of generating 1200 MW electricity, which was transferred to national grid in 1966-67 without paying the share of Azad Jammu and Kashmir in the net profit of hydro generation. It is stated that besides many other small dams, the WAPDA has undertaken the construction of two new hydro electric power generating project on Neelum and Jhelum rivers, in Muzaffarabad District i.e. Neelum Jhelum Hydro Project (to be referred as 'NJHP') with capacity of generating 969 MW and Kohala Project with the capacity of generating 1224 MW electricity. The construction of NJHP was completed and is generating power, while process for acquisition of land for Kohala Project is in process. It is averred that several studies were made before initiating work on NJHP. The first study was made in 1996-97 by NORPALAN (a global consulting company based in Norway), hired by WAPDA. The said company

reported that 20 cumics water would be required for Noseri to Domail for drinking and ecological system and to minimize the environmental impact on the community living in the area. The study was based on calculation of projected population from 2000 to 2050, which was the life of project. According to the said study report by 2050, the population of Muzaffarabad city would be around 5,92,092. It is stated that due to devastated earthquake of 2005, the demography of the area was totally changed as the population of Muzaffarabad has now increased to the level of more than 03 lacs by 2018, due to influx of people of surrounding areas, affected by earthquake and expending economic activities. The WAPDA authorities rejected the aforesaid report on the ground that it will cause an economy loss of 65 million dollars to the State as in case of release of 20 cumecs water WAPDA would not be able to generate the electricity compatible with the expenses incurred thereon. The WAPDA instead proposed to release 3 cumecs water for drinking purpose had struck to its position of the designee prepared for reservoir. It is maintained that report suggested 03 cumecs for drinking and 17 cumecs for sewage dilution, while flow of water was also required to maintain ecological system, as well as, to minimize the environmental impact. However, later on second study for the purpose was conducted by WAPDA from the same agency in year 2010. According to this report, the estimated population of Muzaffarabad city would be 3,37,796 in 2050. It is claimed that the same group consisting of experts, taking millions of rupees for study, reported contradictory to what they had earlier reported, which implies that they had been influenced by some authority and most probably by WAPDA, to save the money, which, would be otherwise required for uplifting the affected area. It is further stated that in view of resistance and protest of civil society, backed by the Government of Azad Jammu and Kashmir through its environmental agency, WAPDA approached the Azad Jammu and Kashmir Council and with its connivance got maneuvered second report through the same agency in year 2009-10, which recommended the release of 09 cumecs water from Noseri to downstream, on the basis of new projected population. As against above, another study was submitted by Japan International Corporation Agency (JICA), in year 2007, stating therein that population position of Muzaffarabad in year 2009 as 1,38,000, the projected population in 2030 as 2.57,000 and in year 2050 as 5,92,000. Both the study reports could not cater the use of water by non-residents and those not counted during the census, such as hospitalized patients, visitors, the college and universities' students, their guardians and visitors, casual visitors in the markets, offices, mosques, and spiritual places from around the State, refugees, camps, which would be more than triple of the number of the projected population given under the first report. Besides that, decreasing water level all around the world due to depletion of glaciers and climate change is not taken into consideration as the source of river Neelum is no exception to the general climate change. It is averred that Government of Azad Jammu and Kashmir was directed to initiate proceedings for acquisition of land for the purpose, while all other directions were

issued by the Azad Jammu and Kashmir Council and Ministry of Kashmir Affairs in favour of WAPDA, bypassing the Government of Azad Jammu and Kashmir. The Government of Azad Jammu and Kashmir was, however, requested for No Objection Certificate from Azad Jammu and Kashmir Environmental Authority, which was conditionally issued on 22.01.2010, which was, later on renewed and supplemented through subsequent No Objection Certificate, which had to be fulfilled by WAPDA, before, during and after completion of the project, but disgustingly, despite completion of the whole project and diversion of the water course of river Neelum, WAPDA has not complied with the conditionalities, imposed by the Azad Jammu and Kashmir Environmental Protection Agency given in the NOC's. Besides above, the Development Authority, Muzaffarabad had also written a letter to Secretary Works and Communication Department on 02.09.2010, listing the hazards which the Muzaffarabad city would face in case of diversion of river Neelum and also suggested measures of combating adverse effects of diversion of the river, the climate and eco system, including the compensation to be assessed. It is stated that if theoretical position is accepted, Neelum Jhelum Hydro Project or any other project launched by WAPDA in Azad Jammu and Kashmir shall be subject to the protocol and laws as enforced by the International Environmental Protection Agency with the consent of local authority i.e. Azad Jammu and Kashmir Government the WAPDA in absence of accepting the Azad Jammu and Kashmir as the territory or province of Pakistan has to follow international laws and subject to its jurisdiction if civil society of Azad Jammu and Kashmir complains to UN Program on environment but it may embarrass geo political diplomatic position of Pakistan at International level. It is further maintained that as Azad Jammu and Kashmir is entrusted as a Local authority, under the interim control of Government of Pakistan, hence, it shall be treated as a territory otherwise included in Pakistan under Article 1(3) of the Constitution of Islamic Republic of Pakistan, 1973. It is maintained that the Constitution of Pakistan shall apply in that case if the international laws/protocol, as envisaged by the United Nations and International Environmental Program. It is further claimed that although Azad Kashmir is technically not a part and province of Pakistan as visualized by Article 1 of the Constitution of Islamic Republic of Pakistan, however, practically it is dealt as territory and province of Pakistan, subject to final resolution of Kashmir dispute in accordance with UNCIP resolutions and is administered like that by the Government of Pakistan, which has the authority to make laws for Azad Jammu and Kashmir under sections 31(3) and (4) of the Azad Jammu and Kashmir Interim Constitution Act, 1974. It is stated that the Government of Pakistan, through its Notification dated 11.05.1971, followed by another Notification dated 06.06.1988, declared that although Azad Kashmir is not part of Pakistan within the meaning of Article 1(2) of the Constitution, it should, for all practical purposes, be treated like any other province. It is further claimed that WAPDA has almost completed Neelum Jhelum Hydro Project generating 969 MW electricity without any agreement with the Government of Azad

Jammu and Kashmir, although all natural resources including water reservoir and profit earned therefrom, fall within the domain of the Government of Azad Jammu and Kashmir under section 52-C of the Interim Constitution Act, 1974 and that too, without taking care of the adverse effects of the diversion of Neelum river from Noseri to Kohala on the eco-system and environment of Azad Jammu and Kashmir, particularly, the area through which the river is flowing, spread over 41 kilometers from Noseri to Domail and 25 kilometers from Domail to Kohala. Similarly, WAPDA has undertaken diversion of river Jhelum from Sarran to Kohala, which will deprive the entire area and inhabitants, living around the river up to a length of 40 KM of its natural benefits, essential for biodiversity besides affecting the entire eco-system of environment of the area, adversely affecting the lives of the people, animals and other bio-diversities, when two rivers, in between which, the district Muzaffarabad is located are diverted, entire district along with its inhabitants and habitat will be subjected to forced migration or succumb to environmental catastrophe. It is alleged that no agreement till date was concluded by the Government of Azad Kashmir with respect to any of the two projects, through which the courses of Neelum and Jhelum rivers are being diverted. It is claimed that river Neelum carries entire sewage down below Noseri, as no sewage treatment plant is installed by the Government or the relevant agencies, for Muzaffarabad City, right from Noseri, wherefrom, the course of Neelum river was diverted, hence, all sewerage outlets are dumped around the river Neelum, and close to living vicinities from having no other outlet rendering the entire area unhygienic and polluted, susceptible to all the diseases. It is maintained that WAPDA had constructed and completed Mangla Dam, at Mirpur, in the decade of sixties due to which, a bulk of population of Mirpur had to migrate to different countries, however, despite that WAPDA has not paid till date any share from net profit earned by it, from the hydroelectricity generated at Mangla, which is violation of Article 161 of the Constitution of Islamic Republic of Pakistan, whereas, the royalty as well as net hydro profit is paid to the Government in respect of like projects functioning there in KPK, hence, the instant constitution petition.

4. The respondent No.1, despite service failed to file written statement, hence, was proceeded ex-parte vide order dated 22.02.2019. However, writ petition has been resisted by respondents Nos. 2 to 5, through separate written statements. In the written statement filed on behalf of respondent No.2, it is stated that petitioners through WAPDA sought remedy against three Mega Hydro Electric Projects within Azad Jammu and Kashmir territory known as (i) Neelum Jhelum Hydro Electric Project (NJHPC), (ii) Kohala Hydro Electric Project at Muzaffarabad and (iii) Mangla Dam Project at Mirpur, whereas all the afore-stated projects have their separate supervisory bodies but the others were not impleaded as party in line of respondents, therefore, the instant writ petition is not maintainable due to non-joinder of necessary parties. It is pleaded that as per Environmental Impact Assessment (EIA) studies,

the Environmental Protection Agencies (EPA) Government of Azad Jammu and Kashmir issued NOC on 12.01.2011 and all these obligations were also made part of draft tri-parties agreement, however, the aforesaid agreement was not formally signed. It is further pleaded that at the time of framing tri-partite agreement draft all different covenant of NOC of EPA-AJ&K Government were made part of agreement with further addition that WAPDA would construct 22 different projects keeping in view the environmental measures and for social uplift of the local community. It is maintained that on demand of Azad Jammu and Kashmir Government WAPDA/NJHPC provided 2.984 Billion Rupees fund to the Azad Jammu and Kashmir Government for construction of projects, however, petitioners without probing real position filed the instant writ petition, which is not maintainable. It is submitted that WAPDA/NJHPC continuously releasing 20 cumecs water since September 2018, which is sufficient for maintaining the aquatic system. It is stated that as per Article 161(2) of the Constitution of Islamic Republic of Pakistan, 1973, on Hydro Power Project two types of profits are given, one is net hydel profit and second is water usage charges, however, as per law net hydel profit could be given to Provinces only, while Government of Azad Jammu and Kashmir is entitled for getting water usage charges, and the same payment will be made after signing agreement which is pending in the Ministry of Water Resources Government of Pakistan. The other contents of writ petition have also been refuted.

5. In written statement filed on behalf of respondents Nos.3 to 5, it is stated that present project was launched by Government of Pakistan for betterment and welfare of public at large and as per section 31(3) Schedule 3, Item No.4 of the Azad Jammu and Kashmir Interim Constitution, 1974, all acts done and proceedings taken by the Government of Pakistan are not challengeable before this Court, hence, the instant writ petition is not maintainable. It is pleaded that petitioners have neither challenged exclusive jurisdiction of Government of Pakistan with regard to construction of Hydro Power Project nor pointed out any violation of law, hence, the instant writ petition is liable to be dismissed. It is submitted that decisive steps were taken and Neelum Project was completed, while steps with regard to Jhelum surcharge (fee) was imposed since 2009, money collected, land was acquired and payment of compensation to the tune of more than 50 Crore was paid, heavy machinery was installed on three sites, if matter is being delayed or prolonged in litigations, the Government of Pakistan has to be sued before the International forum and penalty like Recodic case is likely to be imposed on Government of Pakistan. The other contents of writ petition have also been refuted.

6. Precise facts culminating into filing of Writ Petition No.1744/2018, are that Government of Pakistan through its outlet, Water and Power Development Authority (WAPDA) is undertaking the construction of Dams throughout Pakistan including AJK and Gilgit-Baltistan for construction of Hydroelectricity. It is stated that

Government of Pakistan through Government of AJK awarded land for Neelum Jhelum Project in year 2008-09, from Jagran, Thotha, Majhoi and Kohala for that purpose. It is maintained that WAPDA has already constructed the dam in Mirpur District called as 'Mangla Dam' which has a capacity of generating 1200 MW electricity, which is transferred to the national grid in 1966-67, without paying the share of AJ&K in the net profit of Hydro generation. It is added that WAPDA after more than 10 years construction/works upon the projects namely "Neelum Jhelum Hydro Project" and generating the electricity with the capacity of generating 969 MW and Kohala Project with capacity of generated 1224 MW electricity. The construction of Neelum Jhelum project has been completed and the official respondents are going to start the work on Kohala Project. It is submitted that a study was made in 1996-97 by NORPALAN (a global consulting company based in Norway) which was hired by WAPDA. The said company reported that 20 cumecs water will be required for Noseri to Domail for drinking and eco-logical system and to minimize the environmental impact on the community living in the area. It is also suggested by the said company that 3 cumecs for drinking and 17 cumecs for sewerage dilution while flow of water was also required to maintain ecological system, whereas, the said report was rejected by WAPDA authorities due to loss of 65 million dollars to the State, as in case of release of 20 cumecs water WAPDA would not be able to generate the electricity compatible with the expenses incurred thereupon. It is stated that second study was also made by WAPDA from the same agency during year 2010, however, the said agency came under influence by WAPDA authorities. It is again stated that another study was submitted by Japan International Corporation Agency (JICA), in year 2007, stating therein that both agencies could not cater the use of water by non-residents and those not counted during the census, such as hospitalized patients, visitors, the college and Universities students, their guardians and visitors, casual visitors, in the market, offices, mosques, and spiritual places from around the State, refugees, camps etc. Even though authorities have not bothered to preserve as to what would happen after the project period and as to whether there will be any change in population and its requirements of water usage and the safe environmental conditions for future generations etc. Despite that Government of AJ&K was directed to initiate the proceedings for acquisition of land for the purpose, while all other directions were issued by the Azad Jammu and Kashmir Council and Ministry of Kashmir Affairs in favour of WAPDA, however, the WAPDA did not bother to comply with the conditionalities imposed by the Azad Jammu and Kashmir Environmental Protection Agency given in the NOC's. It is further maintained that as the Azad Jammu and Kashmir is not part, territory and province of Pakistan under the Constitution of Islamic Republic of Pakistan, 1973, therefore, before starting construction work on Kohala Project to determine the liabilities of the AJ&K Government as law in four provinces of Pakistan in compliance of sections 19, 52-A and 52-C, of the Azad Jammu and Kashmir Interim Constitution Act, 1974, including environmental laws,

however, the same was not done, which is ultimately violative of fundamental rights of property, life of person of State subjects, hence, the instant constitution petition.

7. The respondent No.1, failed to file written statement, hence, was proceeded ex-parte vide order dated 22.02.2019. However, writ petition has been resisted by respondents Nos.2 and 3 to 5 and 7, through separate written statements, which are similar to Writ Petition No.1675/2018, hence, need not to be repeated for the sake of brevity and convenience.

8. The learned counsel for the petitioners while reiterating the contents of the writ petitions submitted that respondent WAPDA completed the NJHEP generating 969 MW electricity without any agreement with the government of Azad Jammu and Kashmir although all natural resources including water reservoir and profit thereupon falling within the domain of Azad Jammu and Kashmir under section 52(C) of Azad Jammu and Kashmir Interim Constitution. It is contended that while diverting Neelum river from Noseri to Kohala adverse effects of this project on the ecosystem and environment of Azad Jammu and Kashmir particularly the area connected with the river (41 KM from Noseri to Domail) have not been considered and similarly when the respondents have undertaken the diversion of the river Jhelum from Sarran to Kohala, the adverse impacts likely to affect the biodiversity and the environment of the area ultimately which will affect the life of the people has not been taken into consideration, neither the proper remedial and mitigating measures have been adopted to offset the disaterous effects caused and likely to be caused due to decrease of water flow in the relevant area. It is argued that no agreement till date has been made with the Government of Azad Jammu and Kashmir regarding any of the two projects, neither the matter was referred to the council of common interest. It is also submitted that both the rivers Neelum and Jhelum carried away entire sewage in their full flow time but by reducing water from rivers no Sewage Treatment Plants have been installed by the Government or constructing companies for the city Muzaffarabad and its adjoining areas, thus the sewerage outlets are dumped around the Neelum river and close to living vicinities causing many diseases and pollution of environment. It is further argued that Mangla Dam was completed by WAPDA almost five decades ago and electricity worth of billions rupees has been generated by virtue of said Dam (Power House) and share of the net profit/royalty has not been paid so far to the Government of Azad Jammu and Kashmir for the welfare of its people and their due rights have been denied although the royalty as well as the net hydel profit on similar projects is paid by WAPDA to the provinces of Pakistan particularly Khyber Pakhtun Khwa (KPK) and it has also been apprehended by the learned counsel that there is no likelihood in near future that the profit share or royalty of these projects shall be given to the Government of Azad Jammu and Kashmir and its people. In respect of these two projects, it is vehemently contended that without consent and any

agreement, the natural resources vested to the people and its representative government under constitution of Azad Jammu and Kashmir, diversion of river is share violation of constitution and also in violation of relevant constitutional provision of Islamic Republic of Pakistan. The learned counsel also contended that the mitigating measures as postulated in conditional environmental approval issued by the Environment Protection Agency of Azad Jammu and Kashmir has not been taken/ implemented. Proponent (constructing agency) has installed no Sewage Treatment Plants and water monitoring system has not been constructed/installed. Makri Water Treatment and other facilities stipulated in EPA document have also not been completed. Water Supply Scheme and other commitments for arrangement of Environmental Management Plant has not been so far acted upon in respect of NJHEP. It is further contended that minimum level of release of water (e-flows) as suggested and agreed by the respondents is not sufficient to meet the requirements of the concerned local inhabitants and for other environmental and ecological purposes.

9. On the other hand, Ch. Shabir Ahmed, the learned counsel for WAPDA, while controverting the arguments submitted that as per Environmental Impact Assessment, EPA Government of Azad Jammu and Kashmir issued NOC for construction of NJHEP on 12.01.2011 and all the major features of NOC inspite of the fact that Tripartite agreement has been not formally signed. WAPDA has fulfilled almost all the obligations either relating to environmental issues and those conditions have also been made part of the draft Tripartite agreement with further condition that WAPDA had to construct 22 projects keeping in view the environmental measures and for social uplift of the local community but on the demand of Azad Jammu and Kashmir Government WAPDA instead provided 2.984 Billion Rupees to the Azad Jammu and Kashmir Government for construction of those projects which can be checked from the record. He further contended that the report of NORPLAN mentioned in the petitions does not suggest for release of 22 cumecs water in Neelum river from Noseri, it only mentions 13 cumecs water for maintaining the aquatic system and never recommended for release of 20 cumecs water, however, the learned counsel stated before the Court that 20 cumecs water since September, 2018 has continuously been released by the WAPDA although it caused a loss of billons of rupees to the Company. He further submitted that gauging facilities are existing at different places. Regarding the claim of profit to Government of Azad Jammu and Kashmir, he argued that according to Constitution of Islamic Republic of Pakistan and prevailing laws, net hydel profit can be given only to the provinces of Pakistan, however, Government of Azad Jammu and Kashmir is entitled for water usage charges and WAPDA is ready for payment on the prescribed and agreed rate after execution of the agreement, as the draft is pending in the Ministry of Water Resources Government of Pakistan. The learned counsel also on the direction of the Court placed a certificate regarding released amount of the water on daily basis into Neelum river at Noseri showing the measurement.

Regarding KHPP, he submitted that WAPDA has nothing to do with the said project.

10. In Writ Petition No.1744/2018, Three Gorges company has been impleaded as respondent No.6. Nobody appeared on behalf of said respondents inspite of notice through proclamation in daily Ausaf, issued on 26.09.2019, ex-parte proceedings were ordered against the said respondents. Record of the said project has also been summoned which reflects that the Ministry of Water and Power Government of Pakistan and Chinese Three Gorges Corporation signed an MOU for development of KHPP by CTGC on BOOT (Build, Own, Operate and Transfers) basis, and the project is duly approved by the Government of Azad Jammu and Kashmir vide notification dated 31.08.2016 and Azad Jammu and Kashmir EPA issued conditional NOC in favour of projects companies. The said project is being undertaken by its special company namely Kohala Hydro Construction Limited (KHCL), the project developer has not been impleaded in the line of respondents.

11. We have heard the arguments and gone through the record of the case with utmost care.

12. These writ petitions have been filed by the notable residents of Muzaffarabad and adjoining areas likely to be affected by the construction of the two projects namely NJHEP and KHPP. The NJHEP with the electricity generating capacity of 969 MW is already constructed and functional at river Neelum and the proposed 1124 MW Kohala HPP is planned to be constructed at Jhelum river, being the state subjects of Azad Jammu and Kashmir, the petitioners also raised issue of Mangla Dam royalty/profit share. In Writ Petition No.1675/2018, petitioner No.1 is a retired Judge of Supreme Court of Azad Jammu and Kashmir and amongst others, there are retired senior Bureaucrats, advocates of Supreme Court and High Court of Azad Jammu and Kashmir, Doctors, Journalists and members of trade Associations of Azad Jammu and Kashmir. In Writ Petition No.1744/2018, amongst others, the petitioner No.2 is a former Deputy Speaker of Azad Jammu and Kashmir Legislative Assembly and petitioner No.3 is a former Minister of law.

13. A perusal of record shows that NJHEP has been completed which is operational and its electricity generating capacity is 969 MW. It is a diversion project involving the diversion of river through 28.5 Kilometer long tunnel and its diversion weir is constructed at Noseri 40 Kilometer upstream from Muzaffarabad and the power house is located at Chatter Kalas 22 Kilometer downstream from Muzaffarabad. Minimum environmental flow of water (e-flows) imposed by EPA of Azad Jammu and Kashmir is 15 cumecs at Muzaffarabad, however, through mutual understanding and arrangement it is stated to be 20 cumecs from weir at Noseri. The proposed KHPP will have installed capacity of 1124 MW and it is also the diversion project involving diversion of river through long tunnel. Its diversion weir will be constructed at Village Siran 26 Kilometer upstream from Muzaffar-abad, at river Jhelum and the

power house shall be installed at Village Barsala 32 Kilometer downstream from Muzaffar-abad and the tunnel will be 34.8 K.M. Its E-flow initially was suggested as 22.5 cumecs, however, while issuing the conditional approval, the EPA has imposed the condition of releasing minimum 30 cumecs. It would be useful to reproduce the Conditional Environmental Approval given by EPA of Azad Jammu and Kashmir Government on 22.01.2011 in respect of NJHEP which reads as under:-

"CONDITIONAL ENVIRON-MENTAL APPROVAL (Under Section 11 of AJK Environmental Protection Act, 2000 read with IEE/EIA Regulations, 2000 PEPA)

In exercise of powers conferred under section 11 of Azad Jammu and Kashmir Environmental Protection Act, 2000, the Director General AJK Environmental Protection Agency (AJK-EPA), after the review of Environmental Impact Assess-ment Report (EIA) accords Environmental Approval for the implementation of 969 MW Neelum-Jhelum Hydroelectric Project (NJHEP) subject to the fulfillment of following condi-tions by the proponent;

(i) Proponent shall ensure compliance to National Environmental Quality Standards (NEQSs);

(ii) The WAPDA shall ensure a minimum ecological flow in Neelum River of 15 m 3/s at Muzaffarabad during lean period irrespective of additional inflow downstream from Nauseri;

(iii) The WAPDA shall construct state of the art gauging facility at Muzaffarabad to measure the flow, to be jointly monitored/ operated by WAPDA and Government of Azad Jammu and Kashmir;

(iv) To maintain the Biological Oxygen Demand (BOD) within permissible limits in the remaining flow, the WAPDA shall construct the Sewage Water Treatment Plants for 16 active sewage outlets, laid along the Neelum River in the Municipality of Muzaffarabad, besides installing water quality monitoring system all along the length of river starting from diversion weir to fall of the diverted flow back into the river on permanent basis;

(v) The WAPDA shall ensure the uninterrupted functioning of Makri Water Treatment and Supply Facility. In case the reduced flow during the operational phase of the Project renders its water off-take component dysfunction, the WAPDA shall bear the technical and financial responsibility for its relocation or readjustment as prompt remedial measure;

(vi) The WAPDA shall install an alternate Water Supply Scheme as a sustainable arrangement to cater the demand of growing population and size of Municipality of Muzaffarabad besides making the similar arrangements for the settlements of Nauseri Nausada and Majhoi to offset the impacts of vanishing perennial water resources due to under laying Tunnel;

(vii) To mitigate the loss of aesthetic look of river in Muzaffarabad, WAPDA shall cascade remaining flow, streamline the river banks and level its bed by removing boulders etc. to give it a more pleasant look and to restore its beauty;

(viii) Mitigation measures suggested in the EIA report and Environmental Management Plan (EMP) shall be strictly adhered to ensure not to cast any negative impact on soil ground water, ambient air quality, noise level, natural drainage, flooding, hill torrents and biological resources of the Project area. This should be indicated in the report as "Commitment". Institutional arrangements for implementation of Environmental Management Plan may be finalized well before the commissioning of project, so that proposed mechanism of environmental protection should be operative well in time;

(ix) WAPDA will constitute Environmental Monitoring Committee having the representatives of all concerned stakeholders as mentioned in EIA. The reporting mechanism and TORs of the committee shall be finalized in consultation with AJK-EPA;

(x) Monitoring shall cover the entire period of the Project construction and operation Monitoring reports shall be submitted to AJK-EPA on quarterly basis;

(xi) The Proponent shall provide the copy of this approval and EIA report to the contractor for compliance;

(xii) Compensation shall be provided to inhabitants in case of loss of agricultural land, crops, property, usage right etc. in accordance with the rates that were agreed upon. All conflicting issues regarding compensation should be settled amicably sooner than later;

(xiii) Proponent shall ensure the adequate arrangements for addressing public grievances and implementation of Resettlement Action Plan (RAP) through public Grievances Redress and Settlement Committee (PGRSC) without any delay;

(xiv) Blasting shall be avoided preferably; if it is inevitable, the controlled techniques in accordance with Pakistan Explosive Act, should be adopted in siding and perspective siding prone areas;

(xv) In case independent Environ-mental Specialist Companies are to be hired, as a compulsory arrangement, to undertake measurements of different parameters critically important in determining water and air quality and assessing noise emission level either during construction phase or in both construction and operation phases of the proposed project, the findings of quality analysis on regular basis should positively be shared with AJK -EPA;

(xvi) The Proponent shall ensure that strict and efficient health and safety measures are in place for the protection of workers and

passers-by backed by a comprehensive emergency response mechanism plan;

(xvii) As far as possible, employment should be provided to local people for all unskilled jobs. Preference may also be given to local people for all semi-skilled and skilled jobs. Employment record for all positions shall be provided to AJK-EPA positively;

(xviii) In case the articles of Archeological importance like artifacts, coins rock-arts and other archeological relics are discovered, the work at the site should immediately be stopped and the concerned department or agency should be consulted for the appropriate action;

(xix) Proponent shall ensure all public utilities, such as water supply pipes, power/phone lines be not disturbed by the execution of the project. If it is inevitable then alternative may be provided to the people of the area before hand in consultation with respective agencies under intimation to AJK-EPA;

(xx) Proponent shall take special safety measures while working close to settlements, towns schools and hospitals etc for safety of the general public and livestock;

(xxi) Proponent/contractor shall make sure the safety and security of wild animals and their habitats at the project site and in its environs with the prior consultation and adhering to the guidelines of Forestry and Wildlife Departments strictly;

(xxii) During the excavation of tunnel; the spoil should be dumped at pre-identified location. Free roll down of excavated land shall be prohibited to avert damage to vegetation cover, water bodies, perennial and non-perennial drains, irrigation channels, communication routes and productive lands. Littering would be avoided strictly during transportation of materials;

(xxiii) The mechanized plants, machinery and other equipment must be fitted with noise abatement devices and should have the conformity to NEQS standards. The sites to install the asphalt plant and other machinery would be selected in consultation with the Agency (AJK-EPA). Special consideration must be given to critical installations like school, hospitals, mosques, community hall, etc while selecting temporary utility sites;

(xxiv) The proponent shall not setup labor camps near to habitations and develop independent services utilities to avoid intruding into local population privacy;

(xxv) The proponent shall manage scientifically all waste generated by construction activities and machinery, chemicals' spill, damage done to flora fauna and overall ecology etc;

(xxvi) The proponent shall rehabilitate all sites to their natural conditions affected by temporary use during the construction phase;

(xxvii) The proponent shall be liable for the correctness and validity of the information furnished by the environmental consultant;

(xxviii) Proponent shall be liable for compliance of regulations 13, 14, 17 and 18 of IEE/EIA Regulations 2000, which enunciate the conditions for approval, confirmation of compliance, entry, inspection and monitoring of the proposed project;

(xxix) Proponent would be responsible to facilitate EPA team for any visit for inspection/monitoring etc;

(xxx) Any change in the approved project shall be communicated to AJK-EPA and shall be commenced after obtaining the approval;

(xxxi) This approval shall stand null and void if any of the conditions, mentioned herein before, are not fully complied with;

(xxxii) This approval does not absolve the proponent of the duty to obtain any other approval or clearance that may be required under any law in force or by any competent forum/court of law;

(xxxiii) This Approval shall be valid for a period of three years from the date of its issue under Section 16 of IEE/EIA Regulation, 2009;

(xxxiv) This Approval can bewithdrawn at any time without any prior notice if deemed necessary in the public interest."

14. Later on renewal of Conditional Environmental Approval was issued on 23.10.2014 which would also be usefully reproduced herein below:-

"RENEWAL OF CONDI-TIONAL ENVIRONMENTAL APPROVAL

(Under Section 11 of AJK Environmental Protection Act, 2000 read with IEE/EIA Regulations, 2000 PEPA)

Reference letter No.GM&PD/ NJHPC/2014/W35/91, dated July 23, 2014, please.

In continuation of Environmental Approval granted by the Agency, under section 11 of the Azad Jammu and Kashmir Environ-mental Protection Act, on January 22, 2011, No.P&DD/ EPA/209-13/2011, 2000, (hereby mentioned as previous Approval) for the implementation of Neelum-Jhelum Hydroelectric Project; this is to accord 'Renewed Environmental Approval' in favour of WAPDA for the remaining construction phase of NJHEP subject to the fulfillment of the conditions/ clauses given below;

1. All the conditions imposed under previous Environmental Approval shall stand enforced during the remaining construct phase of the project and the proponent, WAPDA, shall be liable to comply these in true letter and spirit.

2. In continuation or additional to already imposed, the WAPDA shall undertake following measures on priority basis;

i. Dumping of spoil at pre-identified and approved places, and in this respect, dumping of spoil/excavated material at sites other than approved and in flood line of rivers shall be strictly prohibited. Additional sites, as the prevailing situation demands, may be explored if possible to dump the spoil and get approval;

ii. A comprehensive plan to construct protection/retaining walls for all spoil banks, an earnestly required measures, to safeguard and enhance the life of Mangla Reservoir, must be submitted to the Agency within one month time from the issuance of this Approval;

iii. Installment of water Gauging facility without any further delay and, in respect thereof, imple-mentation/execution plan may be shared with the Agency within 03 months' time positively;

iv. For the environment improvement and rehabilitation measures, like soiled/hospital water management support, may be considered for Municipal Corporation Muzaffarabad (Municipal Corporation Mirpur) under NJHEP as confidence building measure;

v. The remodeling and readjustment of off-take of Makri Water Treatment and Supply Facility must be started on prompt basis and, in respect thereof, execution plan may be submitted to the Agency within one month time;

vi. Owing to such situation wherein water supply arrangement for urban areas of Capital city has already been covered under MCDP, the WAPDA shall install a Gravity Water Supply Scheme from Saheli Nullah for the suburbs of Muzaffarabad city;

vii. The statement of expenditures incurred against implementation of Environmental Management Plan (EMP), must be made as an integral part of future Quarterly Reports;

viii. As an integral part of environmental management and rehabilitation under NJHEP, the WAPDA shall workout and execute a Watershed Management Program in consultation with the concerned Government Depar-tments/ agencies like Forest, Agriculture, and Wildlife and Fisheries Departments Govern-ment of AJ&K;

ix. The plantation activity, which is a part of approved EMP of NJHEP, it is required that this activity shall be implemented without any further delay and, in respect thereof, the WAPDA shall submit a plan within one month of this issuance;

x. In compliance to Clause (a) of subsection (2) of section 13, the proponent (WAPDA) shall acknowledge the acceptance of the conditions stipulated here under this Approval by executing an 'Undertaking' in the form set out in Schedule vii of 'Azad Jammu

and Kashmir Environment Protection Agency Review of IEE/EIA Regulations, 2009;

xi. These approvals (previous and renewed) shall stand null and void if any of the conditions mentioned herein or before are not fully complied with."

Compliance of above mitigation measures as well other contents laid down in the above approval of statutory body, the respondent WAPDA is under legal obligation to comply and implement those conditions.

15. As in Azad Jammu and Kashmir, the Environment Protection Agency (EPA) is mandated to ensure sustainable development in terms of Environmental Protection Act, 2000. The preamble of the said Act being relevant is reproduced as under:-

"AN ACT

to provide for the protection, conservation, rehabilitation and improvement of the environment for the prevention and control of pollution and promotion of sustainable development:

WHEREAS, It is expedient to provide for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution, promotion of sustainable development, and for matters connected herewith and incidental there to;"

EPA established under the said Act has to perform its functions as laid down in the Act and Rules made there under. Section 11 ibid explicitly provides that no proponent of a project shall commence any construction or operation unless such proponent has filed with EPA and Initial Environmental Examination (IEE) or where the project is likely to cause an adverse environmental effect, an Environmental Impact Assessment (EIA), and has obtained from the EPA approval in respect thereof. For ready reference the Section 11 ibid is produced as under:-

"11. Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA):

1) No proponent of a project shall commence construction or operation unless he has filed with the Agency, an Initial Environmental Examination (IEE) or where the project is likely to cause an adverse environmental effect, an Environmental Impact Assessment (EIA), and has obtained from the Agency approval in respect thereof.

2) The Agency Shall;

a) Review the Initial Environmental Examination (IEE) and accord its approval, or require submission of an Environmental Impact Assessment (EIA) by the proponent; or

b) Review the Environmental Impact Assessment and accord its approval subject to such conditions as it may deem fit to impose, or require that the Environmental Impact Assess-ment be resubmitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.

3) Every review of an Environmental Impact Assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to; Trade, manufacturing or business activities, process or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reason to be recorded in writing, the Director General of the Agency is of the opinion that the request for confidentiality is not well founded or the public interest in the disclosure outweighs the possible prejudice to the competitive position of the project or its proponent; or international relegations, national security or maintenance of law and order, except with the consent of the Government; or Matters covered by legal professional privilege.

4) The Agency shall communicate its approval or otherwise within a period of four months from the date the Initial Environmental Examination or Environmental Impact Assessment is filed complete in all respect in accordance with the prescribed procedure, failing which the Initial Environmental Exami-nation or, as the case may be, the Environmental Impact Assessment shall be deemed to have been approved, to the extent to which it does not contravene the provision of this Act and the rules and regulations made there under.

5) Subject to subsection (4) the government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.

6) The provisions of subsections (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed.

7) The Agency shall maintain separate Registers for Initial Environmental Examination and Environmental Impact Assess-ment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in subsection (3)."

16. It has also been brought on record that EPA vide letter No. EPA/ 2698-2700/2017 has asked NJHC to file case for confirmation of compliance as required by law. But till to date the confirmation of compliance which is a mandatory requirement of law yet not has been solicited. The contents of letter of EPA read as under:-

"Ref #: EPA/2698-2700/2017

Date: 20.10.2017

Chief Executive Officer,

Neelum-Jhelum Hydropower Company (Pvt.) Ltd., House # B-04, Upper Chatter, Muzaffarabad.

SUBJECT: WRITTEN CONFIR-MATION OF COMPLIANCE FROM EPA BEFORE COMMENCEMENT OF OPERATION OF 969 MW NEELUM-JHELUM HYDRO-POWER PROJECT.

I have been directed to refer to the above subject and to state that the construction of 969 MW Neelum - Jhelum Hydroelectric Project has been completed and, reportedly, the operation of the project is about to commence very soon. In this regard, as per law before commencing the operation of the project, it is mandatory for Neelum -Jhelum Hydro Company (the proponent of the project) to secure/obtain "Written Confirmation of Compliance" from EPA for construction phase, as provided under Regulation 13(2)(b) of "AJ&K Review of Environmental Impact Assessment/IEE Regula-tions 2009", which provides as under:-

"13(2)(b) Where Agency accords its approval subject to certain conditions, the proponent shall;

(a) ----------

(b) Before commencing operation of the project, obtain from Agency a written confirmation of compliance that the conditions of the approval, and the requirements given in the IEE or Environmental Impact Assessment related to design and construction, adoption of mitigatory and other measures and other relevant matters have been duly complied with"

2. The Regulation 14 (Confirmation of Compliance) of said Regulations further enunciates that the request for Written Confirmation of Compliance shall be accompanied by Environmental Management Plan (EMF) for the "Life of the Project" including provisions for monitoring, reporting and auditing.

3. Forgoing in view, this is to intimate that a case for obtaining Written Confirmation of compliance for EPA, that you have implemented all the mitigation measures in true spirit of Environmental Approvals, granted by EPA for the Construction of 969 MW Neelum - Jhelum Hydroelectric Project (NJHEP without securing Confirmation of Compliance would be deemed as a serious breach of Law that is cognizable under Section 16 of AJ&K Environmental Protection Act, 2000.

4. This issue with the approval of Competent Authority.

(M. Ali Saleem)

Assistant Director.

CC.

1. PS to the ASC (Dev)/Secretary Environment, Government of AJ&K.

2. Master File."

Despite issuance of above notice by AJK EPA, NJHC did not file the mandatory confirmation of compliance, hence, going into operation phase without meeting prerequisite mandatory conditions amounts to continuous violation of law which is cognizable by the concerned authority.

17. We are cognizant of the significance of legal measures that are required for effective implementation of sustainable development to enforce environmental quality to be maintained for the well being of the people. Effective legal measures support the regulators to enforce environmental equality standards to safeguard the nature and nature based resources. Notwithstanding, this needs to be equally realized that only Nature-based solutions harness the power and sophistication of nature to turn environmental, social and economic challenges into innovation opportunities. Only Nature-based solutions can address a verity of societal challenges in sustainable ways with the potential to contribute to green growth, fostering people's well-being, providing business opportunities and positioning a State as a leader in world markets. Nature-based solutions are actions which are inspired by, supported by or copied from nature and resilient to change, but to be successful, must be adapted to local conditions. Only Courts judgment may not prove result oriented unless supported by a through nature-based solution, which can only be achieved after conducting a thorough environmental studies/surveys.

18. In view of technical sensitively involved in the nature of case, we have also summoned Raja Mohammad Razzaque, Secretary Population Welfare Department (Member, World Commission on Environmental Law), who had also served as Director General, Environmental Protection Agency for three years, to assist the court in setting Environmental flows (e-flows) for Neelum-Jhelum and Kohala Hydro-power Projects and other appropriate mitigation measures which are essential to safeguard our pristine environment. He concisely sensitized the court on different scenarios with modus operandi as under:-

A. Setting Environmental Flows (e-flows) for Neelum-Jhelum and Kohala Hydropower Projects.

The Brisbane Declaration, 2007'----to which Pakistan is a party---recognized that:

Freshwater ecosystems are the foundation of our social, cultural, and economic well-being.

Freshwater ecosystems are seriously impaired and continue to degrade at alarming rates.

In cognizance of the above, the declaration defines environmental flow as: 'Environmental flows describe the quantity, timing, and quality of water flows required to sustain freshwater and estuarine ecosystems and the human livelihoods and well being that depend on these ecosystems.'

Hydropower projects invariable result in altering the natural flow regime of rivers by constructing dams, and diverting and regulating the flow to optimize power generation. Where diversion tunnels are involved, low flow reaches downstream of the dams are created. Significant hourly and daily variations in flow also occur when the power plants are operated in a peaking mode in low flow winter season, to match the production of electricity with its demand. Environmental flow assessments of hydropower projects are required to inform the decision makers on the tradeoffs between economic gain from power generation and loss to the society, ecosystem, and local economy and people on account of loss of services provided by the rivers. These can include drinking water supply, irrigation, fisheries, and dilution of effluents generated by cities. In the context of hydropower, the common practice based on misconception is a minimum release from the dam which is considered to achieve the balance between economic gain and environment. Environmental flows worldwide in the past have typically been set by engineers as a part of the project design, and have relied on simplistic and outdated approaches such as setting a minimum flow corresponding to 10% of average low flow season or monthly average flow. This approach disregards the local conditions and environment, such as community uses of water, sensitive ecosystems, and trans-boundary impacts. Guidelines for assessment of environmental flows to address these concerns and shortcomings are available in literature.

19. As far as the proposed Kohala Project is concerned, according to record summoned from the Azad Jammu and Kashmir Private Power Cell, history of the project is as under:-

(a) Ministry of Water and Power, GoP and China Three Gorges Corporation (CTGC), signed MOU for development of Kohala HPP by CTGC on BOOT (Build, Own, Operate and Transfers) basis, during the visit of Honorable President of Pakistan to China in October 2008;

(b) Private Power and Infrastructure Board (PPIB) issued letter of Intent (LOI) under the provision of Power Policy 2002 to CTGC on 15 January 2009 to review, update the feasibility study earlier carried out by WAPDA at no risk and cost to the Government of Pakistan (GOP);

(c) Power Policy for Power Generation Projects Year 2002 promulgated by COP is adopted by Government of AJK vide notification # 2472- 84/2006 dated 14.03.2006. As per para 28 of the Power Policy, the Provinces/AJK can mange investment for projects up to 50 MW and for projects above 50 MW, PPIB (Print Power Investment Board) is the main driver and catalyst for managing investment;

(d) Subsequently, letter of Support (LOS) was issued on 31st December 2015 to Kohala Hydro Company Limited subsidiary of China Three Gorges Corporation (CTGC) by PPIB, GOP;

(e) The project is duly approved by GoAJK vide Notification # SE/PDO/11628-39/2016 dated 31.08.2016 and AJK EPA issued conditional NOC in favour of Project Company;

(f) The project Company has signed MOU with Board of Revenue GoAJK for land acquisition and resettlement. The award for most of the land has been issued. The project Company shall sign a 'Land Lease Agreement' with GoAJK and GoAJK shall be the owner of the land and the Project Company shall be lessee. The process of land acquisition is routed through AJK Private Power Cell;

(g) The Project Company has deposited about Rs. 1.5 billion into Government treasury and disbursement to Project affectees have been started by Revenue Department.

NATIONAL BENEFITS OF PROJECT:

1. Generation of 1124 MW electricity.

2. Investment of US$ 2.4 billion.

PROJECT BENEFITS TO AJK:

a. After completion of 30 years term of the project, the project costing US$ 2.4 Billion, would, be transferred to GoAJK free of costs;

b. The Company shall pay approximately Rs.65.65 Billion to GoAJK during 30 years on account of Water use Charges (WUC);

c. The company shall pay roughly Rs.10 billion to GoAJK during 6.5 years of construction of the project on account of taxes;

d. Project would produce employ-ment opportunities and allied business for locals and near areas.

20. As a result of a letter of the Prime Minister of Azad Jammu and Kashmir dated 07.09.2018, the Prime Minister of Pakistan vide letter dated 09.10.2018 directed the Secretary Water Resources Development to submit a report after consultation with the Chairman WAPDA and Azad Jammu and Kashmir Government relating to issues pertaining to reduction in natural river flow passing through Muzaffarabad city due to diversion of water at the

existing NJHP and the proposed KHP. After jointly visiting the NJHP along with relevant technical officials and verifying the actual discharge for the recommendation of technical solution to the issues, the report was prepared by the concerned Secretary which narrates the respective versions of the concerned stakeholders and the recommendations, the same is also usefully reproduced as under:-

"REPORT ON SOCIAL, ENVIRON-MENTAL AND STRATEGIC ISSUES LIKELY TO EMERGE DUE TO CONSTRUCTION OF KOHALA HYDROPOWER PROJECT.

1. Background.

1.01 On 07.09.2018, the Prime Minster of Azad Jammu and Kashmir (AJK) made a correspondence with the Prime Minister of Pakistan followed by a meeting on 09.10.2018. In the said correspondence and the meeting, the PM AJK highlighted that pursuance to diversion of water of Neelum River through Neelum-Jhelum Hydropower Project (NJHP) the Neelum River flows have been drastically reduced below the Neelum Jhelum dam up to Muzaffarabad city. This situation is creating adverse effects on the environment in terms of inter alia, deterioration of the river water quality because of less flows and reduction in water supply for Muzaffarabad city from Makri water supply scheme. The said situation will be further exacerbated after construction of Kohala Hydropower Project (KHP) on Jhelum River because KHP will also divert the water of Jhelum River which presently flows in its natural course to Muzaffarabad, leaving thereby the capital city of AJK devoid of its natural river flows resulting into serious environmental and social issues.

1.02 The Prime Minister's Office (PMO) accordingly conveyed the orders of the Prime Minster vide UO letter dated 09.10.2018 that the Secretary Water Resources in consultation with Chairman WAPDA and Azad Jammu and Kashmir Government shall furnish a report on the issue pertaining to reduction in natural river flow passing through Muzaffarabad city due to diversion of water at the existing NJHP and the proposed KHP after jointly visiting the NJHP along with relevant technical officials and verifying the actual discharge downstream. A technical solution to the issue shall be suggested without involvement of huge funds.

2. Consultation.

2.01 Pursuant to submission of this Ministry's report on "Water Issues of Muzaffarabad City v. NJHPP" submitted to the Prime Minster's office vide this Ministry's U.O. No.2(26)/1989-AC, dated January 02, 2019, the joint Secretary (Water), Ministry of Water Resources visited Muzaffarabad city and the dam site of the proposed Kohala HPP on 19.01.2019. The visit was aimed to make consultation with the concerned officials of the Government of AJK and see the proposed dam site of Kohala Hydropower Project to

review the concerns highlighted by the Government of AJK that with the construction of Kohala HPP, the social, environmental and strategic issues are likely to emerge. During the visit, a meeting was held with the official of Government of AJ&K, representing EPA, Energy and P&D Departments as well as the DC Muzaffarabad. A repre-sentative of the PPIB also participated in the said meeting. The above said team, after the meeting proceeded for the site visit.

2.02 It is also to mention that before proceeding for Muzaffarabad, the JS (W) also held a meeting on 18.01.2019 in the Ministry of Water Resources, Islamabad, with the representatives of China three Gorges Company the developer of Kohala HPP on their request made to the Ministry of Water Resources vide their letter No. Nil, dated 26.12.2018.

2.03 Besides a meeting was also convened in the MoWR under the chairmanship of the Secretary MoWR on 21.02.2019 wherein the ACS Development, MD PPIB and the CEO of Kohala Hydropower Company also participated. The participants shared their respective view point. After deliberations, it was decided that the Kohala Hydropower Company will respond to the concerns of the Government of AJK in a meeting which will be convened after a week.

2.04 The next meeting which scheduled to be held within a week of previous meeting of 21.02.2019, was convened on 08.03.2019 upon request of Government of AJK with a stated reason of obtaining clear mandate from their Prime Minister.

2.05 In the said meeting the parties reiterated their original stance. Besides, the ACS Development, being the representative of the Government of AJK, conveyed that the Prime Minister of AJK has desired that the Government of Pakistan should take cognizance of all other outstanding issues which need resolution since long. The particular points which the ACS Development intimated have been provided under section 3, below.

3. Viewpoint of Stakeholders.

3.01 Concerns and Viewpoint of Government of Azad Jammu and Kashmir.

a. During the meeting held in Muzaffarabad on 19.01.2019, as referred at para 2.01 above, the Director General EPA-AJK briefed that the natural river flow passing through Muzaffarabad city is presently contributed by the Neelum and the Jhelum rivers as the city of Muzaffarabad is located at the confluence of these two rivers.

b. With the construction of Neelum-Jhelum Hydropower Project (NJHP), the actual flows of Neelum River dwindled drastically when the Neelum Jhelum Company (NJC) restricted the outflows from NJ Dam to 9 cumec being the designed minimum environmental flow of NJHP. The situation was immediately felt adversely by the local city.

The flow reduction in Neelum River also adversely affected the water drawing capacity of Makri water supply scheme as reported by the Public Health Engineering Department of AJK. The matter was taken up by the District Administration of Muzaffarabad city with the NJC to resolve the concerns of locals which were expanding into agitation. Pursuant to the intervention of the District Administration, the NJC maintained minimum flow equivalent to 20 cumec through release from NJ Dam.

c. He added that, based on lessons learnt from NJHP, both the people of Muzaffarabad and the Government of AJK, are highly cautious and concerned about the construction of Kohala Hydropower Project (KHP) which incorporates a scheme of diversion of water from the upper limb of Jhelum River at Siran to Kohala on the lower limb of Jhelum by passing Muzaffarabad city, thus depriving the natural water, once again, to the city of Muzaffarabad, except for a stated provision made in KHP to release 30 cumec as minimum environmental flow below the KHP Dam. Given already reduced flow from Neelum after operation of NJHP, the diversion of water after construction of KHP is intolerable for the Government of AJK, socially, environmentally as well as politically both at domestic and international level. Considering the gravity of the situation associated with the construction of KHP which bears high impacts beyond mitigation as well as the adverse public sentiments against the diversion, the people and Government of AJK are of the opinion that instead of a diversion project, KHP should be redesigned as pure Run-of-the River Project without diversion component. Notwithstanding, if the project is to be developed as a diversion scheme, following major mitigation measures are essential which must be taken and a firm commitment be made by the project developer through a tripartite agreement among the Government of AJK , the Project Developer and the Government of Pakistan through the Ministry of Energy (Power Division).

(i) E-flow downstream Saran site should be 80 cumecs (additional 50 cumecs water being added into Jhelum River due to diversion of Neelum River at Kishenganga Hydropower Project in Indian occupied Kashmir be considered as minimum flow below KHP and be maintained during lean period E-flow).

(ii) Provision of Sewage Treatment Plants with 100% water treatment capacity, for settlements in downstream Saran including Muzaffarabad city areas (which is also a part of Addendum No.1 as additional condition in pursuance to condition 10 of Conditional Environmental Approval issued by EPA), vide EPA No.1759-69/2016 dated 05.09.2016.

(iii) Construction of minimum 5 (five) water bodies downstream of the dam at Saran as reflected in Conditional Environmental Approvals of AJK-EPA of dated 05.09.2016.

(iv) Provide drinking water facilities in the affected project corridor areas including urban sports.

(v) All other mitigation measures, as pointed out in the Conditional Environmental NOC for the KHPP, must be executed in letter and spirit.

d. While explaining the existing flow conditions, he shared monthly average flows of Jhelum River at KHP Dam site as observed by Surface Water Hydrology Directorate of WAPDA and reported by Kohala Hydropower Company (Private) Limited (KHCL) in 2016. Based on the two sets of monthly average flow values, he presented a comparison of both the data and also presented a comparison of water envisaged for diversion through KHP as reportedly estimated by WAPDA and the KHCL. The said comparison of natural and diverted flows at KHP Dam site as presented by the DG EPA are given below in Table 1:-

Table 1: Natural Flow of Jhelum River and Diverted Flow from KHP reported by WAPDA and KHC as presented by DG EPA, AJK.

Month	WAPDA (Cumec)	KHCL (Cumec)	WAPDA (Cumec)	KHCL (Cumec)
Jan	97.05	94.30	97.05	75.10
Feb	160.20	160.00	160.20	144.70
Mar	374.07	365.00	374.07	368.60
Apr	574.23	555.00	425.00	425.00
May	648.66	628.00	425.00	425.00
Jun	514.22	491.00	425.00	425.00
Jul	431.17	413.00	425.00	425.00
Aug	365.02	349.00	365.02	361.90
Sep	248.51	243.00	248.51	252.10
Oct	133.58	129.00	133.58	122.30
Nov	97.44	95.30	97.44	82.00
Dec	89.88	90.70	89.88	74.70

e. On a query by the joint Secretary M.WR, the DG EPA responded that initially in 2014, E-flow was calculated through Montana method by the consortium of SMEC that excluded environmental based flow study i.e. DRIFT[1] study and has lest scope to take care of E-flow holistically. The Montana method was applied and E-flow was determined as 18 cumecs, which after refinements in the light of other associated factors, was raised to 22.05 cumecs and submitted to EPA for approval in 2015. The EPA, did not agree with the method applied and formula used for determining E-flow and this was communicated to CTG that 39.05 cumecs will required as E-flow, however as minimum it should not be less than 30 cumecs, Similarly, the CTG during determining E-flow, did not take into account the additional inflow available after operation of Kishenganga HEP, which was highlighted by EPA under its response furnished in 2015. The CTG (KHC) subsequently carried out E-flow Assessment through DRIFT Model, in 2016, which is an ex-post factor in nature. The DRIFT method usually generates and

accordingly study different flow scenarios and finally recommends one with least adverse impacts on biophysical and social environment. Whereas, in this case, the DRIFT has been run to corroborate already determined Flow Scenarios, i.e. 22.05 cumecs proposed by the project developer (KHC) and 30 cumecs determined by EPA, as minimum. The applied DRIFT methodology has also not taken into account of hydrology of river. In order to for examine the facts, the Joint Secretary MoWR GoP desired to review the original hydrological study, including but not limited to, the hydrological analyses, primary data and documents and the derived outcome, conducted by China Three gorges Corporation (CTG) and submitted to EPA AJK. He also advised EPA to seek comments proposals from other stakeholders of AJ&K i.e. Fisheries, Irrigation, Agriculture, Forestry, Municipal Authorities and PP&H Department regarding mitigation measures to be incorporated by the project developer, in order to avoid any gap while examining the basis of the latest E-flow study conducted for KHP.

f. The DG EPA further elaborated the strategic issues and explained that River Jhelum is already regulated in IOK due to three large scale Hydro Power Projects, which include 480 MW Uri-2 HPP, 240 MW Uri-1 and 150 MW Lower Jhelum HPP, and in case, India holds the flow downstream for enhanced generation, the situation downstream from Saran will become further exacerbated. Furthermore, if E-flows at Kohala are determined to fully address the environmental and social concerns of downstream reaches, it will strengthen Pakistan's arguments in case it contests for getting more environmental flow from India at any third forum. Besides, as per final award by CoA on Feb 18, 2013, the Parties to the Indus Waters Treaty have been afforded the right to make a recourse to the court for having reconsideration of the E-flows given in Kishenganga 2013 award after a period of 7 years of operation of Kishenganga.

g. In view of above, the DG EPA, on behalf of the Government of AJK recommended that a comprehensive environmental study should be conducted to determine the actual E-f low on the earliest basis on the similar lines as recommended in case of NJHPP vide the report of the Ministry of Water Resources submitted to the Prime Minister of trade-off options regarding the re-designing of the project as run of river instead of tunneling project.

h. The additional items raised by the ACS Development in the meeting held on 08.03.2019 were:

(i) provision of 614 cusecs water from Mangla Dam to AJK for irrigation and drinking purposes;

(ii) Complete and full imple-mentation of the recommen-dations of the report prepared by the MoWR on the environmental concerns associated with the Neelum-Jhelum Hydropower Project;

(iii) Payment of Water Use Charge/Net Hydel Profit at par with the provinces in accordance with recommendations of the committee

constituted by the Prime Minister under the convenorship of Secretary Finance Division and comprising the Secretary MoWR and the CS AJK;

(iv) Implementation of Mansehra-Muzaffarabad - Mirpur - Mangla road under the CPEC as agreed during the 7th JCC of CPEC.

3.02 Viewpoint of Private Power Infrastructure Board (PPIB)

a. The PPIB vide its letter dated 19.02.2019 conveyed to this Ministry its viewpoint as given in the ensuing paragraphs.

b. 1124 MW Kohala Hydropower Project (the Project) is a Run of River scheme planned to be located on Jhelum River with Dam/Weir near Siran in District Jhelum Valley and Power House near Barsala/Kohala Bridge district Muzaffarabad.

c. The project is being developed by Kohala Hydropower Company Private Limited (KHCL) under Power Policy 2002 of Government of Pakistan as adopted in AJ&K. The project is being sponsored by China Three Gorges Corporation through its subsidiary M/s CSAIL with 70% share in equity, Silk Road Fund with 15% share in equity and IFC with 15% share in equity.

d. The Project is included in CPEC to which Letter of Support (LOS) was issued by PPIB on 31st December 2015. Currently it is at Financial closing (FC) Stage for which KHCL has completed a number of milestones for achievement of FC and FC achievement dated was 31st December 2018 yet some crucial pre-requisites particularly the land acquisition process has not yet been completed by the Go AJ&K.

e. It is import to mention here that after operation of recently completed Neelum-Jhelum Hydropower Project (N-J HPP) by WAPDA, major portion of the flow from Neelum River has been diverted through tunnel bypassing Muzaffarabad city and only environmental (e-flow) is being released by WAPDA in the Neelum River. The local community of Muzaffarabad started showing its concern over reduced flow in Neelum River considering it insufficient to cater for the needs of the city. Consequently, GoAJ&K raised its apprehension about e-flow of Kohala Hydropower Project and is linking it with the N-J H PP e-flow issued; due to which activities on land acquisition have been stopped. The GoAJ&K is demanding a higher e-flow from Kohala Hydropower Project and at the same time wants to put the burden to KHCL for construction of municipal sewage treatment plants in Muzaffarabad city.

f. It is important to mention here that prior to inclusion of Kohala HPP in CPEC program, the E-flow was fixed @ 5 cumecs in the Feasibility Study conducted by WAPDA. Then the Chinese Investors reviewed the E-flow and concluded @ 15 cumecs. After inclusion of the project in CPEC, the E-Flow was worked out based on scientific method and international/World Bank standards (much more

stringent than that of government of AJ&K) which confirmed sufficiency of 22.05 cumecs to cater for maintenance of aquatic life, needs of community downstream of the dam sit, dilution waster water from the city of Muzaffarabad and water supply requirements of the city and adjoining population considering their projected growth for next 50 years.

g. However, the Government of AJ&K requested E-Flow @ 30 cumecs which was accepted by the investors in courtesy of Kohala HPP being a China Pakistan Economic Corridor Project. The Environment Protection Agency of AJ&K government as per its rules and regulations went through long rigorous process including extensive consultations with relevant departments as well as local communities and decided E-Flow @ 30 cumecs and issued NOC on 22nd December.

h. Accordingly, the design of the project got changed and bids were obtained through ICB and NEPRA approved project cost and tariff on 2nd April 2018. Payment on account of land lease for about 53% public and private land has been made by the Company to AJ&K Government. All kinds of Agreements have been initialed between Company and the Government of AJ&K and Pakistan including Power Purchase Agreement (PPA). The contractor was also mobilized to perform preliminary construction works.

i. Moreover, besides generous compensations i.e. more than government and market rates to the affected people, activities under corporate social responsibility (CSR) have also been initiated which also include fully funded higher education support to project affected youth in the field of engineering from Chinese universities with the assurance of employment and so far twenty eight students are benefiting and this figure will cross hundred in next couple of years.

j. It is noteworthy that Kohala HPP is the largest power project under CPEC regime in terms of investment to the tune of US$ 2.5 Billion which is likely to open extensive employment and business opportunities for locals to improve their quality of life on sustainable basis. Moreover, the government of AJ&K will receive billions of rupees on account of land lease, taxes, water use charged etc. for performing its functions during construction and operation of the plant.

k. it is worth mentioning here that after completion of the term period of 30 years, project will be transferred to AJ&K government free of cost and AJ&K government will be selling electricity to the national grid at a feasible unit rate which would be adding significantly income sources of AJ&K government for its self-sufficiency spending towards socio-economic uplift of the people of AJ&K.

l. Approximately 80% population of Muzaffarabad is associated with Neelum River and about 20% with Jhelum River. WAPDA in order to

address the concern of AJ&K government and people have already increased minim flow from 9 cumecs to 20 cumecs, whereas minimum 30 cumecs E-Flow release from Kohala project is already much higher than the future 50 years requirements at downstream. This minimum E-Flow will occur only for about two-three months during winter season and will gradually increase up to annual average of 68 cumecs with the increase in natural flow upstream.

m. In view of the above, it is stated that Kohala Hydropower Project is at advance stage of development for which all major project's agreements have been finalized and all necessary approvals of the investors, governments, lenders and Sinosure are in place. It is single largest investment so far in any IPP in Pakistan/AJ&K which is being developed in the private sector under a well defined policy framework. Further, the scientifically determined e-flow of 30 cumecs which is duly approved by AJ&K EPA, is much higher than the future downstream requirements in the river i.e. maintenance of aquatic life, needs of community downstream of the dam sit, dilution of waste water from the city Muzaffarabad and water supply requirement of the city and adjoining population considering their projected growth for next 50 years, therefore, any enhancement of e-flow from existing approval e-flow of 30 cumecs will require a design change which will have serious adverse impacts on the project tariff already approved by NEPRA, the project cost as well as substantial delay in its commissioning. This may also require approvals of the Chinese investor, Chinese government, lenders and Sinosure as well as NEPRA, and will require considerable time. Therefore, at this point in time minimum e-flow should be kept @ 30 cumecs which is more than the e-flow requirement and approved by the EPA, government of AJ&K, with the condition that necessity of any enhancement of e-flow may be fixed through adaptive method vis- -vis quantity and period of e-flow releases, after commercial operation of the Project, and provision of water bodies may be decided as per Condition at Sr. K (xxiii) (Creation of Water Bodies) of AJ&K EPA approval dated 22nd December 2016 and "EPA Stance" at Sr.No. K (xxiii) of the Undertaking given by the Company to the EPA in relation with said approval of AJ&K -EPA.

3.03 Viewpoint of Kohala Hydro Company (Private) Limited (KHCL)- The Project Developer.

a. The KHCL during the meetings held in the MoWR apprised that the project developer comprises a consortium of China three gorges Corporation (70% shareholding), International Finance Corporation (IFC) of World Bank Group (15% shareholding) and Silk road Fund (15% shareholding). This consortium forms China three gorges South Asia Investment Limited (CSAIL) which is undertaking Kohala Hydropower project through its company known as Kohala Hydro Company (Private) Limited (KHCL). The CTG enjoys a good international repute in terms of investment in hydropower and wind power plants where with an investment portfolio of 63.10 billion in Europe, USD 5 billion in Brazil and USD 20 billion as an expected investment in Asia including USD 6 billion under the CPEC.

b. The CSAIL's Kohala venture is a biggest Foreign Direct Investment in the hydropower sector under the ongoing CPEC being implemented under the BOOT model. The total investment amount is USD 2.7 billion. The company will transfer the project complete project to the Government of AJ&K after 30 years operation which will provide USD 400 million to the Government of AJ&K , annually. Therefore, the Government of AJK should cooperate with the KHCL to solve all kind of issues related to the project. If the matter gets settled and resolved, the construction work has to be started in the first half of year 2019 according to the project implementation plan.

c. The CTG has made huge struggle of eight years to bring the project under the CPEC, as generally no investors were inclined for investment in AJK due to its disputed status. Due to the Environmental-flow (E-flow) issue, the project has been stalled for almost eight months due to which the Company had to transfer 90% of its EPC staff to other overseas projects. Presently 80 Chinese engineers along with 150 number of various kind of machinery and 200 local people are mobilized on site. It is apprehended that in case the matter is not resolved the funds allocated for Kohala HPP may be diverted to other investment ventures of the CTG Company. With this state of affairs, the KHCL team is losing its confidence in its head office with every day passed.

d. As a matter of fact, the design of Kohala Hydropower Project (KHPP) has been based on 30 cumec Environmental flow (E-flow) pursuant to the official demand of the AJK as against the E-flow calculated by the KHCL of 22.05 cumec. The AJK EPA, while giving comments on Technical Report of KHPP, conveyed to PPIB, vide letter dated 09.07.2015, that the E-flow of 30 cumec must be ensured. During 10th POE meeting held on 24.03.2016, POE decided the E-flows as 30 cumec in Jhelum River. Accordingly, the AJK EPA issued conditional No Objection Certificate (NOC) to KHCL on 22.12.2016 stating, inter alia that "....Environmental Flow downstream not less than 30 m3/sec, during lean period" This was finally approved by the IFC on 09.07.2017. Based on approval by the AJK EPA and subsequently by the POE of PPIB, the EPC contract was awarded on 21.01.2017 and the financing structure was finalized with lenders. In addition, based on the technical, commercial and the economic indicators of the Project, tariff has also been determined by NEPRA on 11.10.2018 i.e. two years after the approval of design by the POE.

e. On the conditional NOC issued by the AJK EPA on 22.12.2016, the CEO KHCL gave undertaking to the AJK EPA on 18.07.2017 that the CEO KHCL fully understood and accepted the conditions mentioned in the Conditional Environmental Approval (the NOC) of 1124 MW Kohala HPP accorded by the AJK EPA on 22.12.2016 subject to mutual understating/ interpretations on the eight conditions on which KHCL provided its rationale and agreed during the meeting held in EPA office Muzaffarabad on 04.05.2017.

f. The KHCL stated in its rationale that the construction of water bodies being one of the major conditions imposed by the AJK EPA in its conditional EPA was discussed. It was stated that in case of NJHP the consultants of NJHP furnished their apparent opinion that construction of water bodies is not technically feasible due to following reasons;

(i) High sediment load in Jhelum River, any water body created in the river bed will be filled up with sediment deposited in flood period;

(ii) Given the flow of Himalayan River, any structure constructed will be washed during floods.

g. The DG EPA-AJK on the above rationale of KHCL recorded his observation on 04.05.2017 by pointing out that in this case NJHP have already allocated funds for feasibility study of construction of water bodies to determine the status of being technically viable. The Chief Engineer CDO (WAPDA) also pointed out that the slope of Neelum River is much steep than Jhelum River. Considering water bodies as conductive to environment, the construction has been proposed for Neelum River provided with the gates to flush sediments during low flood level.

h. The Agreed position of AJK EPA and KHCL on the above condition and the rationale as presented by the KCHL to the MoWR is as follows:-

"The condition will be reviewed in line with outcome of the feasibility study for construction of water bodies in Neelum River by NJHP followed by independent third party feasibility study by KHCL to be engaged, if necessary, in consultation with EPA-AJK"

i. With regard to consideration of water bodies, the KHCL also apprised that NEPRA during the hearing on 19.07.2018, did not allow the construction of water bodies at a cost of USD 100 million as part of tariff of KHPP and conveyed that the aforementioned decision of NEPRA Authority is based on the available information provided by the Sponsor Company/project Company. However, if there are any studies conducted by the AJK-EPA regarding the proposed water bodies those may be shared with NEPRA for further necessary action.

j. The KHCL in view of above process, has apprised to the MoWR to proceed further in the following manner:-

(i) Based on NJ project feasibility study, Company will hire independent third party consultant to make feasibility study on water bodies at company's cost.

(ii) The report will be submitted to all stakeholders including GoAJK, NEPRA, IFC and third party Consultant for review and finalization.

(iii) The final report with estimates cost, design and construction schedule will be submitted to NEPRA for final approval.

k. Besides water bodies, the other major condition imposed in the Conditional NOC issued by AJK-EPA was concerning the Sewage Treatment Plants (STPs). The KHCL in this regard submitted its position as follows:-

(i) AJK EPA through addendum dated 28.11.2018 communicated that the installation of Sewage Treatment be an integral part of Environmental Management Plan (EMP) of the Kohala Hydro Power Project.

(ii) The National Electric Power Regulatory Authority (NEPRA) based on feasibility study, detailed engineering design, environmental approvals and EPC contract has determined tariff on cost plus basis. The cost does not include cost of any sewage treatment plant.

(iii) The justification for the installation of Sewage Treatment Plant provided by EPA is to offset the potential impacts of the increase in biological Oxygen Demand (BOD) of the remaining flow of River Jhelum downstream, during the operation phases, due to serious threat of exponential increase in remaining reduced flow in river downstream. This ground is not supported with any scientific evidence or model study and is purely an observation of AJK EPA.

(iv) AJK EPA, through addendum dated 28.11.2018 communicated that the installation of Sewage Treatment be an integral part of Environmental Management Plan (EMP) of the Kohala Hydro Power Project.

(v) The National Electric Power Regulatory Authority (NEPRA) based on feasibility study, detailed engineering design, environmental approvals and EPC contract has determined tariff on cost plus basis. The cost does not include cost of any sewage treatment plant.

(vi) The justification for the installation of Sewage Treatment Plant provided by EPA is to offset the potential impacts of the increase in biological Oxygen Demand (BOD) of the remaining flow of River Jhelum down-stream during the operation phases, due to serious threat of exponential increase in remaining reduced flow in river downstream. This ground id not supported with any scientific evidence or model study and is purely an observation of AJK EPA.

(vii) The KHCL ESIA Report (approved from IFC, POE, EP AJK, Chinese Government clearly states that environmental factors like Dissolved Oxygen, turbidity, total dissolved solids, water pollution, BOD, and Chemical Oxygen Demand (COD) etc, are not limiting factors in Jhelum River in terms of impacts on migration and distribution of fish or even otherwise.

(viii) Drift Model study for E-flow of Kohala Project considers the water quality including the concentration of untreated sewage

discharge into Jhelum River, it also considers the predicted impacts of other hydropower project namely KHEP, NJHPP, PHPP, KAHPP and KHPP.

(ix) The municipal sewage of Muzaffarabad is predicted to be 1.7 cumec in 2050. As there are no any wastewater treatment facilities in Muzaffarabad, all the municipal sewage from city is being directly discharged into the Jhelum river. Therefore, the dilution water demanding is 17 cumec to EPA Pak's dilution rate should be no less than 10.1.

(x) Based on aforementioned, the average monthly ecological flow (68 cumec) minimum ecological flow (30 cumec), and 2 days flushing discharge more than 1000 cumec are enough for sewage dilution.

(xi) Considering the big revenues of water using charge and different taxes collected by GoAJK after the operation of project, GoAJK may carryout investment on infrastructure projects such as sewage treatment plants in the future.

1. With the above background and the circumstances, the KHCL conveyed its considered view as follows:

(i) Increase in E-flow is technically, commercially and legally not justifiable by GoAJ&K department, it also be not supported with any scientific evidence or model study by GoAJ&K departments. PPIB and GoAJ&K should give final decision as soon as possible. In case the E-flow is changed it will result into the following:

a. Delay of the investment of at least 3 years;

b. Additional cost more than USD 30 million for redesign of the project;

c. Reduction of Capacity;

d. 5%-10% increase in tariff;

e. Cancellation of the Project by CTG due to change in strategy and policy after three years.

(ii) Company will hire independent third party consultant to make feasibility study on water bodies at company's cost based on NJ Feasibility Study. The report will be submitted to all stakeholders including GoAJK and NEPRA, IFC and third party Consultant for review and finalization. The final report with estimated cost, design and construction schedule will be submitted to NEPRA for final approval.

(iii) Sewage Treatment Plants are not relevant to the project.

m. Beside above, the KHCL along with the PPIB during the last meeting held in the MoWR on 08.03.2019, conveyed that in case the downstream release from the KHPP is increased from 30 cumec to

60 cumec, the KHCL will remain entitled to get its revenue according to the terms and conditions approved in the tariff petition of Kohala HPP. Any financial implication whatsoever will have to be borne by the Power Purchaser and not by the KHCL. The CEO of the Company also apprised that sufficient arrangements are available in the existing design of the project to ensure 60 cumec release downstream of the dam KHPP in the Jhelum River.

4. Examination by the MoWR of the E-flow Assessment Technical Report Published on 15.08.2016 as Provided by KHCL.

4.01 The E-flow assessment report studies various reaches of Jhelum and Neelum Rivers in which the critical reach, with regard to the environmental concern for the Muzaffarabad city, is the Reach 4a as denominated in the E-flow assessment report of KHCL. In this reach, like all other reaches, the impact of diversion has been studied on various disciplines including geomorphology, water quality, alage, vegetation, macro invertebrates and fish.

4.02 Furthermore, the impacts on the said disciplines have been studied for thirteen various scenarios which broadly cover the 'no-diversion' scenarios vis. (i) the baseline conditions as prevailed in year 2012 and (ii) the present day conditions as observed in 2016, and the 'diversion' scenarios based on simulation results of the DRIFT model. Further diversification induced in these scenarios pertain to taking impact of other hydropower projects in the Jhelum basin particularly on Neelum, Kunhar and Jhelum.

4.03 These scenarios have further been broadened by adding various levels of management to protect biodiversity. These scenarios range from 'Business as Usual' to 1st, 2nd and 3rd degree of protection denominated as 'Pro-1', 'pro-2' and 'pro-3, respectively.

4.04 In order to ascertain the impact assessed in the E-flow report, the most relevant scenarios are as follows:-

(i) Base-BAU;

(ii) KoP30-BAU;

(iii) KoP30-pro 1/2/3.

4.05 Base-BAU is 2012 baseline, which represent the river conditions before completion of Kishenganga Hydroelectric plant (KHEP) Neelum Jhelum Hydropower Project (NJHPP) and Patrind Hydropower project (PHPP), with Business as Usual (BAU) in the reaches represented by various sites on Jhelum Neelum and in the Mahl and Kahuta nullahs.

4.06 KoP30-BAU is KHEP, NJHPP, PHPP and Karot HPP, plus baseload generation at Kohala HPP with a minimum release of 30 cumec; BAU along with the protection against environmental degradation for all sites in the basin.

4.07 KOP30-Pro 1/2/3 is KHEP, NJHPP, PHPP and Karot HPP, plus baseload generation at Kohala HPP with a minimum release of 30 cumec. Protection level 3 in place in the reaches represented by Sites 4a and 4 (just upstream and downstream of Kohala HPP dam, respectively). Protection level 2 in place in the reaches represented by Sites 7 and Kahuta nullah; and Protection level 1 in place in the reaches represented by Sites 5 and 6, and in the Mahl nullah.

4.08 Before proceeding to the impacts on various disciplines defined above, it is imperative to present the change in natural flow pattern in Jhelum River below the Kohala HPP dam as assessed and reported in the E-flow assessment report. The E-flow report under section 5.2.1 stated that once Kohala HPP is constructed and with a minimum release of either 30 or 22.05 cumec, the duration of the wet season will be reduced by about 100 days and that of the dry seasons will extended by approximately the same amount. Linked with this the onset of the wet seasons will be delayed and that of the dry season will be earlier than in the baseline. In simple terms, the dry season in without Kohala HPP starts from 2nd week of September which will start from 4th week of June every year with Kohala HPP even after introducing the Protection scenarios. Similarly, the wet season which stars without Kohala HPP in 1st week of March will start in 1st week of April when Kohala HPP will be constructed and operationalized. The reduction in flow as determined in the E-flow assessment report Table 5.4 on the basis of 5 day average minimum dry season flow will be from 67 cumec to 31 cumec in 'without' and 'with' Kohala HPP. This reduction in flow and prolonged dry season as well as reduced wet season are the major consequences of the Kohala HPP.

4.09 In order to understand the impact of the flow reduction as assessed in the E-flow report and summarized above, the most adversely hit disciplines worked out by the E-flow assessment report are Geomorphology, Water Quality, the Algae, the Macro invertebrates and fish particularly the Kashmir Catfish.

4.10 In the said disciplines, with regard to geomorphology most adversely affected indicator is the 'area of secondary channels, backwater' where the decline in condition is up to 70% in BAU scenario and has been presented with marginal to no improvement even with the highest degree of protection. This is an alarming situation which is diagnosed in the E-flow assessment report under section 5.2.3.1 as a result of trapping of suspended and bedload sediments in the Kohala reservoir, combined with much lower flows. It is important to clarify that even if the diversion component of Kohala HPP is excluded, the situation would not improve as unless the Kohala reservoir is filled up with the sediments, almost all the inflowing sediments will be trapped in the reservoir leading to reduction of area of secondary channels.

4.11 Under the discipline of Water Quality, the indictor of 'Nutrient Concentration' in dry season represent the decline the quality from 64% in the Vaseline to 150% with Kohala condition; the situation

has however been stimulated as improved from 150% to 79% after introducing the highest degree of protection which stil remains 15% less than the baseline condition. The E-flow assessment report under sections 5, 2, 3, 2 also describes the situation by stating that the nutrients are predicted to increase under the Kohala HPP scenarios. This is mainly related to loss of dilution capacity for nutrients and other pollutants entering the river from the surrounding landscape. It further describes that the predicted temperature under the Kohala HPP scenarios are erratic, because, at the decreased flow volumes expected, the buffering capacity of the river is much reduced, and water temperature are expected to track to ambient temperature more closely than under baseline conditions. Importantly, with regard to introducing protection as part of biodiversity Management Plan, the E-flow assessment report under sections 4, 2, 1 titled as 'Measures for achieving protection levels' provides that "For nutrients, these levels of protection could be achieved through the construction and operation of sewage effluent treatment plants, and other means of reducing the inflow of raw sewage into the rivers. Such a process is reportedly under discussion for NJHEP.

4.12 Similar level of degradation on algae, macro invertebrates and Kashmir Catfish can be seen in Table 5.5 under the above mentioned three particular scenarios which are only because of reduced flow volume in the river reach downstream of Kohala HPP dam up to Muzaffarabad.

4.13 The overall scores of the ecosystem integrity as exhibited in Figure 5.5 under Section 5. 2. 4 for the reach under reference in the E-flow assessment report, indicate that the ecosystem in the said reach will move from moderately modified (baseline condition) to largely modified (with Kohala Project). It is also depicts that by introducing the highest protection level in the reach below Kohala HPP dam, the ecosystem can be maintained as it prevails in the present day condition. This is a qualitative scale of integrity which has been developed on the assumption that sewage treatment plants will be installed and operated under the Neelum Jhelum Hydropower Project financing as stated in section 4.2.1 of E-f low assessment report.

5. Findings.

5.01 The E-flow assessment report presents a rigorous work in terms of assessment of impact on the environment due to diversion of Jhelum river flow by developing and studying various scenarios. these scenarios primarily pertain to 'without' and 'with' Kohala diversion and have been further broadened by taking into consideration the impacts of other hydropower projects in the basin like Neelum-Jhelum, Patrind, Karot and Kishenganga as well as introducing the biodiversity management options in terms of human induced measures through which the environmental degradation can be mitigated like reducing fish catch through policing, sewage water treatment by assuming that water treatment plants will be

installed etc. It has, however, been observed that the E-flow assessment report analyzed on one value of 22.5 cumec followed by another single value of 30 cumec and instead of analyzing the impact of a range of E-flows i.e. higher than 30 cumec as the same environmental team did in Kishenganga Dam case arbitration on various disciplines of ecosystem like fish, water quality, and their key indictors rather it restricted the analysis to only two values of E-flows vis. 22.5 cumec and 30 cumec. Had it been done in the said environmental study report of Kohala HPP, it would have provided a flexible matrix of impacts on the environment for making the decision by the stakeholders while arriving at a trade-off between the benefits of the projects and the likely cost of environmental degradation to be borne by the people of AJK.

5.02 With regard to the assessment made in the study, the Environmental Consultants of Kohala HPP have determined that Water Quality deteriorates significantly due to prolonged dry season associated with significantly reduced flow when Kohala HPP will be operationalised. The degradation in water quality has been assumed in the F-flow assessment report as controllable by installing and operating the sewage treatment plants to be financed from the Neelum-Jhelum Hydropower Project's financing. Hence, in first place, the environmental study considers the provision of sewage Treatment Plant is an essential component to provide comprehensive treatment of all kind of effluent draining into Jhelum River. Besides, while reviewing the environmental study report, it cannot be comprehended that how the sewage which is presently drained into Jhelum River, in the Siran to Muzaffarabad reach, has been referred to be installed from NJHP financing as the dilution water being denied in the Jhelum River is due to proposed diversion of water at Kohala HPP and not by the NJHP.

5.03 The environmental report also determined significant reduction in flow are of secondary channels and has mentioned that this adverse condition cannot be improved even under the stringent protection levels of biodiversity proposed to be introduced by the project developer as the reduction in flow area of secondary channels can only be mitigated by providing the requisite water in the main stem of Jhelum River. Since, with the diversion of water through Kohala HPP, the requisite water cannot be made available, therefore, in order to restore the backwater areas in the secondary channels, the provision of water bodies duly maintained by periodic flushing of sediments through adequate ancillaries remain the only option which is to be provided to mitigate the adverse impact associated with shrinking of the secondary channels.

5.04 Through, the E-flow report demonstrates the environmental conditions as they exist presently can be maintained i.e. the baseline integrity of the ecosystem, by introducing various levels of biodiversity and environmental management options when Kohala HPP will be in operation phase, however, with the above noted shortcoming of not analyzing E-flows higher than 30 cumec, there is no other option available except to adopt the recommended E-flow of

30 cumec with a compulsory implementation of biodiversity and environmental management plan. Prima facie there is no harm in following the course as suggested in the E-flow assessment report vis 30 cumec environmental flow with a compulsory implementation of biodiversity and environmental management plan, however, careful review of the situation reveals that should the report presented impact of E-flow value higher than 30 cumec, the owner and the affectees would have been in a comfortable position to find a trade-off by deciding as whether or not to choose the costlier option of implementation of biodiversity management plan for protection/maintaining the environment/ecosystem in its present form as well as making the investment financially viable, simultaneously.

6. Recommendations.

6.01 The above concerns as ascertained by the MoWR from the examination of the environmental study report of Kohala Hydropower Project were shared with the representatives of AJK, PPIB and the project Developer (KHCL) whereupon the stakeholders reiterated their stated position as briefly mentioned at paras 3, 4 and 5 above, respectively.

6.02 In the above situated, and particularly taking cognizance of the adverse impacts of Kohala HPP as determined in the environmental study report on the water quality in the Jhelum River reach from Siran to Muzaffarabad as well as reduction in area of secondary channels, the project developer must have to undertake all the protection measures including those considered by the environmental consultants as essential like sewage treatment plants to control the environmental degradation associated with diversion of flow at Kohala HPP. The specific measures required to be taken in addition to all those being provided by the project developer includes providing a comprehensive sewage water treatment for Muzaffarabad city and the water bodies duly maintained by periodic flushing of sediments through adequate ancillaries provided as permanent designed feature.

6.03 The E-flow of 30 cumec be increased by the same magnitude as it has become available in Jhelum River due to the diversion of Neelum River at Kishenganga Hydroelectric Plant at least during the winter months i.e. November to February. The average monthly diversion of flows by Kishenganga HEP during the winter months are 16, 11, 11, and 15 cumec for the months of November, December, January and February, respectively.

6.04 In case the project developer does not agree to undertake the mitigation measures including, but not limited to comprehensive sewage treatment plant and water bodies, it should sign an MOU with the Government of AJK to release 60 cumec minimum flow during the months of November to February for which necessary revision may be solicited in the tariff from NEPRA at the CoD stage.

6.05 The other issues raised by the ACS Development AJK vis supply of 614 cusec water for AJK from Mangla Dam, payment of Water Use Charge/NHP on the analogy of other provinces from the public sector hydropower projects, expeditious implementa-tion of recommendations made in the MoWR's report on the environmental issue of Muzaffarabad associated with the diversion of water at NJHPP and implementation of 4M Road as agreed project under the CPEC, have been found as not related to the environmental concerns of Muzaffarabad associated with Kohala HPP. It is, therefore, proposed that these issues may be dealt with separately for which the GoP may consider constituting a high powered committee.

6.06 The above recommendations are essential to be considered for implementation to avoid social, environmental and strategic issues likely to emerge due to construction of Kohala Hydropower Project.

21. The Secretary Local Government Rural Development Department and D.G. Health submitted their reports regarding completion/execution of projects funded by WAPDA, wherein, it has been submitted that in order to offset the adverse environmental and social impact of Neelum Jhelum Hydroelectric Power Project (NJHEP), WAPDA has provided Rs.546.399 million to LG&RDD. It has further been stated that for rehabilitation and augmentation of water supply schemes affected by NJHP, tunnel Rs.282.602 million were provided. The learned counsel for WAPDA was also directed to produce the detail of the measurements of the water discharge (eflows), and he furnished a report along with the summary of environmental mitigation projects up to 10.02.2019, a portion of which reads as under:-

"As per Tripartite Agreement among Government of Pakistan, WAPDA/NJHPC and Govern-ment of AJ&K, WAPDA/NJHPC shall ensure 15 cumecs of water in Neelum River at Muzaffarabad as environmental flow. As per decision of the Cabinet Committee on Energy conveyed by Ministry of Water Resources, GoP vide letter No.2(26)/89- AC dated 19.09.2019. Accordingly, WAPDA/NJHPC is maintaining and shall maintain minimum release of 20 cumecs. For measuring the environmental flow, Gauging Stations have been installed by Surface Water Hydrology (SWH) Department of WAPDA at Neelum River to record the discharge on hourly and daily basis regularly."

22. An application has been filed on behalf of residents of constituency No.4, Khawara, wherein, it has been stated that due to construction of NJHEP the natural resources of water in the said constituency have totally been dried and due to this act of the constructing company, the people of constituency No.4, Muzaffarabad, are feeling inconvenient and they fetch water from city Muzaffarabad, therefore, while protecting the rights of the inhabitants, they may be supplied water in sufficient quantity.

23. The above reproduced relevant documents and pleadings of the parties sufficiently shed light upon the background and different versions of the stakeholders (i.e. Government of Azad Kashmir, Government of Pakistan, Project developers and affected people of Azad Jammu and Kashmir) and advantages and disadvantages attached with the projects under discussion. The case can be summarized in questions as under:-

(i) Whether the minimum Ecological Flow (E-Flow) determined and imposed by EPA, AJK in its respective Conditional Environ-mental Approvals is sufficient for maintaining the aquatic and ecological system and to minimize the adverse environmental impacts?

(ii) Whether the WAPDA, despite the completion of NJHEP has not complied with the conditional iities imposed by the EPA, AJK?

(iii) Whether the WAPDA and Kohala Hydro Company Limited (KHCL) (The Proponents) can undertake and operate the respective projects, without payment of net hydro profit or water usages charges to the Government of AJK, and without finalizing the tripartite agreements?

(iv) Whether this Court has jurisdiction in matters raised before us?

(v) Whether the Projects have been undertaken in violation of sections, 19, 52-A, 52-C, of Azad Jammu and Kashmir Interim Constitution Act, 1974 and Environmental Laws and whether the rights of the people to life, property have been infringed?

(vi) Whether the remedial and mitigating measures have been adopted by the proponents of the projects to offset the adverse affects caused or likely to be caused due to the decrease of the water in the relevant areas?

(vii) Whether the net hydel profit of Mangla Dam is not being paid to the Government of Azad Jammu and Kashmir?

First of all we would like to take up the question of jurisdiction of this Court in the matter. These writ petitions have been filed under section 44 of Azad Jammu and Kashmir Interim Constitution Act, 1974, which provides that when no other adequate remedy is provided on the application of any aggrieved party, this Court may make an order directing the person performing functions in connection with the affairs of Azad Jammu and Kashmir or local authority to refrain from doing that which is not permitted by law to do or to do that which is required by law to do. The Court can also make declaration regarding any act if the same is found or proceedings taken by the persons performing functions in connection with the affairs of state or local authority if the same have been done without any lawful authority. If the question of enforcement of any of fundamental rights conferred by the constitution arises then the Court can make an appropriate order giving direction to the person or authority including council and the

Government for the implementation and enforcement of such right. In simple words, one can say that if the authority performing any act in connection with the affairs of the State of Azad Jammu and Kashmir, in violation of any law or performs any act by departure from law or any right guaranteed by the constitution is infringed by that authority or person, the Court has jurisdiction to make its enforcement through its order, direction etc. In these writ petitions, it is alleged that both the projects, NJHEP and KHPP have been undertaken in violation of constitutional provision Nos. 19, 52-A and 52-C of Azad Jammu and Kashmir Interim Constitution Act, 1974. Section 52-C of the constitution is usefully reproduced herein below:-

"52-C. Natural Resource Endow-ment. (1) The natural resource of Azad Jammu and Kashmir which having a potential of economic value and providing for the sustenance of life for future generations shall be preserved and regulated by an Act of the assembly.

(2) Without prejudice to sub-Article (1), the natural resource of Azad Jammu and Kashmir may be utilized under the law, in the economic and efficient manner, by the Government and also may be authorized under an Act of Assembly to utilize any resource of the State by any person, entity or authority of Pakistan in consideration of valuable economic benefits for the public interest such as net-hydel profit or royalty or any other acceptable form or benefit but without affecting the pristine environmental value of the inherent endowment of the State."

24. The abovementioned Article clearly postulates that natural resources of Azad Jammu and Kashmir shall be preserved and regulated by the act of Assembly of Azad Jammu and Kashmir and those resources can also be utilized under law when those are authorized through act of the Assembly, to any person entity or authority of Pakistan the key words are "in consideration of valuable economic benefits for public interest", such as net hydel profit or other benefits. Second condition laid down in the above provision of the constitution is that any proposed activity project ought not to affect the environmental value of the inherent endowment of the State. Under Article 24-A, the executive authority of the Government also includes to make contract regarding any State property as well, but both the projects under discussion are being carried out without finalizing any contract with the Government of Azad Jammu and Kashmir. Furthermore, it is also averred that the fundamental rights of the people to life and clean water are also being affected without adopting mitigating measures.

25. When WAPDA was going to construct a grid station in F-6/1, Islamabad, some residents of Sector F-6/1 in a letter complained and pointed out that the electromagnetic field by the presence of high voltage transmission lines on the grid station would pose a serious health hazard to the area. The Hon'ble Supreme Court of Pakistan took cognizance of the matter in the famous case of 'Shehla Zia and others v. WAPDA and others' (PLD 1994 SC 693) and on the

objections of jurisdiction of the Court held that where life of citizens is degraded, quality of life is adversely affected and health hazards are created affecting the large numbers of people, the Court in exercise of its jurisdiction under Article 184(3) of the Constitution of Pakistan may grant relief to the extent of even stopping the functions of the units which create pollution and environmental degradation as the dignity of man, life and privacy are inviolable fundamental rights to be preserved and protected. The apex Court further defined the extended scope of life or right to life in the following manners:-

"Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighborhood or at a far off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be rebidding near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward and this has happened so in the present case."

26. With regard to the right of water, general comments were adopted in the 29th Session of the Committee on Economic Social and Cultural Rights (CESCR) United Nations on 20th of January 2003 and it has been affirmed that human right to water entitle everyone to sufficient, safe, acceptable physically accessible and affordable water for personal and domestic uses. The right to water is essential for securing adequate standard of living, particularly since it is one of the most fundamental condition for survival and this right has been recognized in wide range of international

documents, for instance; Article 4, paragraph 2, of the convention on the elimination of all forms of Discrimination against Women stipulates that 'State parties shall ensure to women the right to enjoy adequate living conditions, particularly in relation to water supply'. Article 24 paragraph 2, of the Convention on the rights of the child requires State parties to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water. Water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihood, however, it has been prescribed in the documents that priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights. So, importance of sustainable access to water resources for agriculture to realize the right to adequate food and it is the obligation of the State and Society as well to ensure that the people may not be deprived of its means of subsistence and there is adequate access to water or subsistence farming and for securing the livelihood of indigenous people. Environmental hygiene, as an aspect of the right to heal under Article 12, paragraph 2 (b) of the Covenant encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions, for example, State parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. Likewise, State parties should monitor and combat situation, where aquatic ecosystem serve as a habitat for vectors of diseases, wherever, they pose a risk to human living environments and water supplied necessary for the right to water and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water. The water supply for each person must be sufficient and continuous for person and domestic uses and its quality must be of high degree, free from microorganisms, chemical substances and radiological hazards that constitute a threat to a person's health.

Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use. The rural areas should be protected from unlawful encroachment and pollution. Right to water, like any other human right, imposes three types of obligations on the State parties: i.e. obligation to respect, obligation to protect and obligation to fulfill. So any denial by the respondents to the people or limits equal access to adequate water or unlawfully diminishing or polluting water i.e. through waste from State owned facilities or through use and testing of weapons would be considered as infringement of this basic right of the people and for the enforcement of such right, a writ can be issued validly, especially, when the constitutional provisions are alleged to have been violated, so in

such backdrop of the facts this Court has the jurisdiction in the matter as the projects under discussion are situated in the territory of Azad Jammu and Kashmir and the control on the natural resources of Azad Jammu and Kashmir Government has been recognized in the above referred constitutional provisions, so, any deviation from the legal requirements and infringement of fundamental rights, would be sufficient to seek the redressal by invoking the extraordinary jurisdiction conferred upon this Court, under section 44 of the Constitution Act.

27. Regarding the other hereinabove formulated points, it is admitted position that the tripartite agreements in relation to Mangla Dam Raising Project was concluded between the Government of Islamic Republic of Pakistan, Azad Government of the State of Jammu and Kashmir and Water and Power Development Authority on 27th of June, 2003 but with regard to the other projects NJHEP and KHPP although the draft agreements have been brought on record but these agreements have not been executed, finalized and signed by the concerned parties and execution of the agreements between the concerned parties (Government of Pakistan, Government of the State of Jammu and Kashmir and project developer is necessary and mandatory, so, without signing and finalizing the agreements, operation of the projects under construction cannot be considered as legal and justified. However, record reveals that before construction of NJHEP, the Conditional Environmental Approval was given by the EPA of Azad Jammu and Kashmir on 22.01.2011 and as mitigation and remedial measures, some conditions were imposed by EPA. We have summoned the report in this regard by the concerned Agencies, which shows that although many of the conditions have been fulfilled but some major conditions have not been complied with, so far. It was clarified by the EPA that mitigation measures suggested in the EIA report and Environmental Management Plan shall be strictly adhered to ensure not to cause any negative impact on soil ground water, ambient air quality, noise level, natural drainage, flooding, hill torrents and biological resources of the project area and this should be indicated in the report as commitment. Institutional arrangements for implementation of EMP may be finalized well before the commencing of project, so that the proposed mechanism of environmental protection should be operative well in time and the proponents shall ensure the adequate arrangements for addressing public grievances and implementation of resettlement action plan without any delay and the proponents shall rehabilitate all sites to their natural conditions affected by temporary use during construction phase. This condition was very much clear that EMP will be finalized well before the commencing of projects but the record shows that this condition was not strictly adhered and the proponent of the project NJHEP was also obliged under approval that they shall rehabilitate all sites to their natural conditions used during construction. It was further expressed in clear terms that approval shall stand null and void if any of the condition mentioned therein is not fully complied with.

28. Later on, when the renewal approval was issued by EPA on 23.10.2014, it was made clear that all the conditions imposed under previous environmental approval shall stand enforced during the remaining construction phase of the project and the proponent, WAPDA shall be liable to comply these in letter and spirit and the renewal approval was given in continuation as addition to already imposed conditions. It was also stipulated therein that comprehensive plan to construct protection/retaining walls for all spoil banks, an earnestly required measure, to safeguard and enhance the life of Mangla Reservoir, must be submitted to the Agency within one month time from the issuance of this Approval, but this condition has also not been fulfilled. Once again in this approval it was also mentioned in unambiguous words that these approvals shall stand null and void if any of the conditions are not fully complied with. Section 11 of the Environmental Protection Act, 2000, provides that no proponent of projects shall commence any construction or operation unless such proponent has filed with EPA and Initial Environmental Examination (IEE) or where the project is likely to cause adverse environmental effects. According to section 2 (b) of the aforesaid section, review of the Environmental Impact Assessment and accord its approval subject to such conditions as it may deems fit to impose, or EIA be resubmitted after such modification as may be stipulated. The conditions have not been fulfilled which are mandatory before commencing the operation of the projects. The letter of EPA dated 20.10.2017, shows that such compliance report/confirmation has not been submitted to the EPA before commencing of the project, NJHEP and this is also another violation of law.

29. We have summoned the report from EPA regarding the compliance/ implementation of the conditions of the approval by WAPDA under NJHEP, which has been submitted before the Court, the current status of the conditions has been given in the report. The report is usefully reproduced below:--

CONDITIONS OF ENVIRONMENTAL APPROVAL	COMPLIANCE STATUS	ADDITIONAL NOTES
(i) The WAPDA shall ensure a minimum Ecological Flow (F-flow) in Neelum River of 15 M3/s (cumecs) at Muzaffarabad during lean period irrespective of additional inflow downstream from Nauseri	At the time of commissioning of operation of NJHEP, the WAPDA released 09 cumecs from Dam site as E-flow. However, in the light of recommendation by the Commission of Ministry of Water Resources (MoWR), it has been decided by the Cabinet Committee Energy	Commission formulated by the PM of Pakistan comprises of Secretary and Joint Secretary Ministry of Water Resources (MoWR) to examine the issues emerged in the wake of NJHEP and submit Report with Recommendations (Section-D" of the Report). The Report of

	(CCOE) GoP, on August, 28, 2019, that till the fresh Environmental Study is done to determine the E-flow under NJHEP, the compensation release or water from Dam Site Nauseri shall be 20 cumecs. As agreed upon, the Government of AJ&K has prepared the ToRs of said Environmental study, which will be funded by GoP.	the Commission is annexed as "A". The Minutes of CCOE meeting are annexed as "B".
(iii) The WAPDA shall construct state of the art Gauging Facility at Muzaffar-abad to measure the flow, to be jointly monitored/ operated by WAPDA and Go AJK.	The WAPDA has released funds, on September 18, 2018, amounting Rs.04.00 million to Department of Physical Planning and Housing (PP&H) Govern-ment of AJ&K for construction.	The latest imple-mentation status of the activity/project is with PP&H Department, being implementing Agency.
(iv). To maintain the Biological Oxygen Demand (BOD) within permissible limits in the remaining flow, the WAPDA shall construct the Sewage Water Treatment Plants for 16 active sewage outlets, laid along the Neelum River in the Municipality of Muzaffarabad, besides installing water quality monitoring system all along the length of river starting the diverted flow back into the river on permanent basis.	The WAPDA didn't include the budget in the approved PC-1 of NJHEP for the construction of Sewage Treatment Plants (STPs). However, in the light of recommendations of the Commission, Cabinet Committee on Energy (CCOE) has decided that GoP/WAPDA will provide funds for construction of STPs along River Neelum	
(v). The WAPDA shall ensure the uninterrupted	The WAPDA has released Rs.942.95 million to PP&H Govt.	The latest implementation status of the activity/ project

functioning of Makri Water Treatment and Supply Facility. In case the reduced flow during the operational phase of the Project renders its water off-take component dysfunctional, the WAPDA shall bear the technical and financial responsibility for its relocation or readjustment as a prompt remedial measure.	of AJ&K for the purpose on September 18, 2018.	is with PP&H Department, being implementing Agency.
(vi). The WAPDA shall install an alternate Water Supply Scheme as a sustainable arrangement to cater the demand of growing population and size of Municipality of Muzaffarabad besides making the similar arrangement for the settlements of Nauseri Nausada and Majhoi to offset the impacts of vanishing perennial water resources due to under laying Tunnel.	In the light of Environmental Approval, the WAPDA was liabvle to implement 05- Water Supply Schemes for Muzaffarabad Nauseri, Nausada, and Majhoi. However, the WAPDA implemented 64 Water Schemes, through LG&RDD Govt. of AJ&K in areas adjoining to NJHEP with total cost of Rs.263.800 million.	
(vii). To mitigate the loss of aesthetic look of river in Muzaffarabad, WAPDA shall cascade remaining flow, streamline the river banks and level its bed by removing boulders etc. to give it a more pleasant look and to restore its beauty. (Construction of Water bodies.	For carrying out a feasibility Study of Water bodies in Neelum River, the WAPDA provided Rs.103.333 million, on 10.10.2017 to Central Design Office (CDO), PP&H, Govt. of AJ&K. The feasibility has already been completed by CDO. The approved budget provision in PC-1 of NJHEP for the construction of Water bodies is Rs.2079.273 million. However, in	

	the light of feasibility, more than Rs.8000.00 million would be required. The Commission has also strongly recommended the construction of Water bodies, which has been endorsed by the Cabinet Committee on Energy (CCOE), accordingly.	
Renewed (2nd) Environmental Approval by AJK-EPA, dated October 10, 2014.		
(ii). A comprehen-sive plan to construct protection/retaining walls for all spoil banks, an earnestly required measure, to safeguard and enhance the life of Mangla reservoir, must submitted to the Agency within one-month time from the issuance of this Approval.	Construction of protection/ retaining walls at spoil banks is yet to be done by WAPDA at most of the places.	
(iv). For the environment improvement and rehabilitation measures, like solid/ hospital waster management support, may be considered for Municipal Corporation Muzaffarabad (Municipal Corporation Mirpur) under NJHEP as conflidence building measure.	For the construction of a solid Waster Recycling Plant in Muzaffarabad in Municipality, the WAPDA has already released funds amounting Rs.263.8 million to Local Government and Rural Development Department (LG&RDD) of AJ&K in 2016. The feasibility of said activity is under progress.	The latest imple-mentation status of the activity/project is with Local Government and Rural Development Department, being implementing Agency.
(vi). Owing to such situation wherein water supply arrangement for urban areas of Capital city has already been covered under MCDP, the WAPDA shall install a	In the light of recommendation by the Commission, a Greater Water Supply is proposed to be constructed from Dam Site to Muzaffarabad.	

Gravity Water Supply Scheme from Saheli Nullah for the suburbs of Muzaffarabad city.		
(viii). As an integral part of the environment management and rehabilitation under NJHEP, the WAPDA shall workout and execute a Watershed Management Program in consultation with the concerned Govern-ment Departments/ agencies like Forest, Agriculture and Wildlife and Fisheries Departments Government of AJ&K.	The Forest Department, Govt. of AJ&K has already implemented a Watershed Management Project with the financial assistance of WAPDA of Rs.150.00 million.	The latest implementation status of the activity/project is with Forest Department, being implementing Agency.

30. The report of Secretary Water Resources Government of Pakistan has been reproduced in para 20 of this judgment wherein, the respective versions of the stakeholders have been brought on record and it has been mentioned therein that the Government of Azad Jammu and Kashmir proposed the run of river for the project KHPP instead of water diversion through tunneling and it has also been apprised that major mitigation measures are essential, which must be taken as a firm commitment, be made through a tripartite agreement among the Government of AJK , the project Developer and the Government of Pakistan through Ministry of Energy (Power Division). E-flow downstream Saran site should be 80 cumecs and construction of Sewage Treatment Plants with 100% water treatment capacity, construction of minimum 5 water bodies downstream of the dam at Saran, Drinking water facilities in the affected project and overall mitigation measures have been pointed out in the conditional Environmental NOC for KHPP and demanded the execution of agreements in letter and spirit. The D.G, EPA, stated before the inquiry officer that 39.05 cumecs water will be required for e-flow, however, at minimum it should not be less than 30 cumecs on the weir of KHPP. The comprehensive environmental study regarding the actual flow has also been demanded and the other demands which were reiterated therein that the payment of water usages charges and net hydel profit at par with the provinces of Pakistan in accordance with recommendation of the committee constituted by the Prime Minister under the convenership of the Secretary Finance Division and comprising the Secretary MoWR and the CS, AJK. The implementation of the other projects, i.e. Mansehra, Muzaffarabad, Mirpur Mangla road under the CPEC has also been stressed upon.

31. Now, on one side both the projects have some adverse impacts on the environment and can affect the biodiversity of the area to

some extent. On the other hand although the projects have also benefits and can enhance the economy of the State for a sustainable developments, for example; the consortium; China three gorges South Asia Investment Limited which is undertaking Kohala Hydro Project through Kohala Private Limited (KHCL) which is committed to make it a firm investment of US$ 2.7 billion in KHPP under BOOT model and the company will transfer the complete projects to the Government of AJ&K after 30 years of its operation which will provide USD 400 million to the Government of Azad Jammu and Kashmir annually and the project developer has made huge struggle and due to this, it will generate 1124 MW electricity, so, the project will definitely become beneficial in terms of revenue and its generating capacity will ultimately cause a benefit to the people of Azad Jammu and Kashmir as well. In such situation, balance should be maintained between the benefit and loss to the people and the Government.

In such state of affairs in a case when issue of cutting the trees for Canal Widening Project Lahore, came before the Supreme Court of Pakistan in a case reported as 2011 SCMR 1743, some important principles have been laid down therein. The petitioners, "Lahore Bachao Tehreek", had challenged the project of ' Government of Punjab for widening of 14 kilometer long Canal Bank road' on the ground that the project would not only destroy the green belt/park and biodiversity of the area but also fail to solve the problem of traffic congestion at Canal Road for which the project has purportedly been designed. By resolving the matter the concept of public trust has been elaborated therein. It was further held by the Hon'ble Court that although the adjoining area of the road was an environmental asset and the greenery around it added the beauty and romance to the city but If human had shunned reasons and the civilizational impact or had taken their love of nature too far, they would still have been living in caves, eating insects and raw meat and mating like animals, so, finally it is the human needs which are to be preferred. The relevant portion of the judgment is reproduced herein below:-

"In Passing the court may add that it is conscious of the historic and emotional appeal of the Canal which was built initially by the last Muslim Ruling Dynasty, the Mughals and extended in 1861 by the British. It is indeed an environmental asset. The greenery around it adds beauty and romance to the city. In times gone by there must have been flourishing fields, meadows and green valleys. Much later when the road on both sides of the Canal was metalled, there would hardly have been a few residential colonies. But slowly and gradually, as the population increased, residential colonies were built to cater to the needs of the populace. The mushroom growth of residential colonies is a post independence phenomenon. It assumed a greater momentum in the last 3/4 decades. This caused massive damage to the flourishing fields, the orchards and to the habitats. The ill-conceived commercialization of residential areas had its toll as well. Industrialization on the outskirts of the city further

confounded the situation and this resulted in traffic flow to multiply manifolds. The loss of those green valleys evokes a natural lament and nostalgia, but this is what happens to environment and ecology when human needs increase and the cities expand bringing in their wake paints, issues, and Thomas hardy's "Madding Crowd". The famous German Philosopher Frederick Engels (1820-1895) who belonged to the same period when the canal was built, was alluding to this paradox when he said.

This however, is the flip side of human saga. It has a positive dimension too. If humans had shunned reason and the civilizational impact or had taken their love of nature too far, they would still have been living in caves, eating insects and raw meat and mating like animals. The discovery and development of the bounties and beauties of nature are partly attributable to human perception, ingenuity, struggle and its harnessing. John Keats, the poet of nature and beauty was referring to these human virtues when he said:-

Who, of men, can tell

That flowers would bloom, or that green fruit would swell To meeting pulp, that fish would have bright mail. The earth its dower of river, wood, and vale, the meadows runnels, runnels pebble-stones, The seed its harvest, or the lute its tones, tones ravishment, or ravishment its sweet. If human souls did never kiss and greet?

The beauty of the canal and of the greenbelt on both sides of Canal Road lie partly in beholder's eye i.e. human aesthetics, imagination, design and engineering. It is the human needs which require widening of the road."

32. So, in the light of above observation of the apex Court of Pakistan, we have come to the pragmatic beneficial and balanced approach with regard to these projects. The report of schemes executed under NJHEP has also been produced which shows that in order to offset the adverse environmental and social impact of NJHEP, WAPDA has provided Rs.546.3999 million to LG&RDD. For the rehabilitation and augmentation of water supply schemes affected by NJHEP tunnel, Rs.282.600 millions was provided. Under this component total 64 water supply schemes were identified with the consultation of affected communities which benefited almost 30,000 population among affected areas. To cater the solid waste management requirement of Muzaffarabad city Rs.263.800 were allocated for Integrated Solid Waste Management project. List of executed and completed projects has also been furnished and work on some of schemes could not be started due to litigation i.e. Water Supply Scheme Chanal Bang, Water Supply Scheme Achral etc. and 43 projects have been completed, however, four schemes are under progress. The report submitted by EPA reveals that so far, WAPDA did not include the budget in the approved PC-1, NJHEP for Sewage Treatment Plant, however, in the light of recommendations of the commission cabinet meeting on Energy (CCOE) decided that

WAPDA, Government of Pakistan will provide funds for construction of Sewage Treatment Plants along with river Neelum, and this was a big and one of the main condition of approval which has not been implemented by the WAPDA. The other big one was construction of Water Bodies and although according to the report of WAPDA funds of Rs. 103.333 have been transferred to AJ&K Government for construction of water bodies on Neelum river but in the light of report its projected costs would be eight thousands millions (Rs.8000 millions) and the commission of inquiry discussed hereinabove has also strongly recommended the construction of water bodies which has been endorsed by cabinet meeting on Energy for construction of water bodies. The WAPDA has not released the amount so far which they are legally bound to provide. The Cabinet meeting on Energy of Government of Pakistan (CCOE) has approved recommendations of Ministry of Water Resources regarding the water issues of Muzaffarabad city due to NJHEP, vide its approval dated 19.09.2019 and it was directed as under:-

"vi. All the confidence building measures being part of the 4th Revised PC-1 shall continue and WAPDA will expeditiously release the funds after duly fulfilling codal formalities;

vii. In addition, to resolve this issue in true spirit and to effectively mitigate environ-mental and social issues, required funds be allocated by WAPDA/ GoP for additional mitigation measures as mentioned in EPA NOC and in draft tripartite agreement for which required funds are not allocated in 4th revised PC1. These measures include construction of compre-hensive sewerage treatment and disposal system, supply of water from Dam site for Muzaffarabad city and construction of water bodies/cascades on river Neelum downstream the Neelum Jhelum Dam."

(underlining is for emphasis)

33. Regarding the E-flow on NJHEP, a certificate has been issued by WAPDA and it has been confirmed that as per decision of the cabinet meeting on energy vide letter dated 19.09.2019, the NJHEP shall maintain minimum release of 20 cumecs and it has been stated that approximately 30 cumecs water released has been maintained by WAPDA throughout the month of September 2019. Although in the EPA approval, the limit of 20 cumecs is not mentioned but when the WAPDA can maintain this minimum flow of water at the relevant places though provisionally then in our view, this e-flow level should not be reduced in future and minimum level of 20 cumecs must be maintained all the years to come. Another certificate issued by WAPDA shows that WAPDA has transferred Rs.3,041.96/- Millions to the different departments of Government of Azad Jammu and Kashmir for construction of different schemes under environmental mitigation measures, so the Government of AJ&K is also responsible to complete those schemes for which they requested and received the funds. As it has been observed earlier that the agreements in this regard have not been executed, (some main schemes have not so far been completed) like water bodies,

Sewage Treatment Plants and Greater Water Supply Schemes, so, WAPDA and NJHPC is under legal obligation to complete the remaining projects as stipulated by EPA, in the conditional approvals as well as in draft tripartite agreements to minimize the adverse environmental impacts on the social, biological and economic life of the people to maintain the ecological system of the area.

34. With regard to the e-flow, at KOHPP, the EPA, AJ&K issued conditional NOC and it had determined the eflow of 30 cumecs during the lean period vide its NOC dated 22.12.2016 and thereafter a contract was awarded on 21.02.2017 to the concerned project developer. Although it has been mentioned in the report of commission that the water bodies at river Jhelum are not technically feasible due to reason that high sediment load in Jhelum river, water body created in the river bed will be filled up with the sediment deposited in flood period and with the higher flow of Himalayan river, any structure constructed thereupon, will be washed away during floods but this view is not supported by other circumstances of the case. If the feasibility report on NJHEP regarding the construction of water bodies is approved then there is no reason that why these water bodies cannot be constructed on Jhelum river in relation to the KHPP particularly when it is on record that Chief Engineer CPO (WAPDA) also pointed out that slope of Neelum river is much steep than the Jhelum river. It has also been suggested by the commission that construction of water bodies shall be reviewed in line with outcome of the feasibility study. Regarding the other major conditions, construction of Sewage Treatment Plants, KHCL has only the reservation that any financial implication should be borne by the power purchaser and not by the KHCL is not justified. The construction of Water Sewage Treatment Plants is necessary as it has been mentioned in the technical report that the dry season in Kohala HPP starts from 2nd week of September which will start from 4th week of June every year with Kohala HPP even after introducing the protection scenarios. According to Biodiversity Management Plan, the e-flow assessment report provides that for nutrients, these levels of protection could be achieved through the construction and operation of sewage effluent treatment plants. The report of commission further clarifies about water bodies that in order to restore the backwater areas in the secondary channels, the provision of water bodies duly maintained by periodic flushing of sediments through adequate ancillaries. The financial expenses cannot be preferred on lives of the people. Tariff issue can easily be settled between KHPC and NEPRA.

35. Some issues connected with the Mangla Dam and its raising project have also been highlighted by the petitioners that provisions contained in Clause 6.2 of the agreement are clear for the purpose of approved allocation of 126 cusecs water as envisaged in the agreement. The affected land owners are not being paid enhanced compensation of the lands. It is also contended that 'Haryam Bridge' is under construction since long and yet has not been completed

although the recent project has already been completed almost more than 13 year ago and construction of bridge has been stipulated in clause 6.1 of the agreement, which is reproduced herein below:-

6.1. The WAPDA shall construct bridge at Dhangali. The construction of another bridge (Mirpur to Islam Garrh) shall be taken up by the Ministry of KANA&SAFRON, Government of Pakistan and the Ministry of Finance and Revenue, Government of Pakistan shall provide funds under PSDP."

(Underlinings are ours)

Different resolutions against non-implementation of the agreements have been expressed by the different Organizations like 'Kashmir Press Club, Mirpur Chamber of Commerce and Industry, and District Bar Association Mirpur. Rathoa Haryam Bridge has not been completed after the period of even 15 years. The compensation for the landlords of Mangla Dam affectees, according to the judgments of the Courts have not been given to them so far and the greater water supply scheme has not been completed for Mirpur city. The public buildings of different institutions made in new city and in Model Small Towns, Chaksawari, Islam Garh and Dadyal like Schools, Colleges and Hospitals and other offices are not 100% functional and completed. This fact is admitted by WAPDA as it prepared and submitted a 2nd revised PC-1 by including the demand of Rs. 2 billions for remaining work and Rs.10 billions to be paid as compensation to the land owners for approval before Government of Pakistan (Ministry of PDR) in the meeting dated 27th March, 2019 and the both matters are still awaiting approval by the government.

36. Under the agreement, it was incumbent upon the WAPDA to complete the projects promised through agreements well within time. Needs of water on construction of greater water supply scheme by providing 126 cusec water has not been catered so far, so, WAPDA must own its commitments that the people of the areas who have been affected not once but twice, first in the decade of sixty and second at the time of upraising of Mangla Dam Project. When the EPA issued the renewal conditional environmental approval on 23.10.2014, it also imposed urge upon WAPDA with comprehensive plan to construct the protection retaining walls to safeguard the life of Mangla Reservoir within one month time but the same has not been done and due to construction of Dam, some areas on the banks of reservoir have badly damaged, which require urgent attention of the project developer, WAPDA. To get the compensation amount of the acquired lands according to the market value as determined finally by the Courts of law is a statutory and constitutional right of the people which is being denied by WAPDA.

37. It is to be observed here that as the conditional approval has been given by the EPA AJK for construction of both the projects and land required for the construction of the projects was also acquired by the Government of Azad Jammu and Kashmir, so, it cannot be

said that the projects have been executed or implemented without the consent of the Government of Azad Jammu and Kashmir, which is the representative Government of the people of Azad Jammu and Kashmir and it has also got funds from the WAPDA for different schemes relating to the projects and some of them have not been completed, so far, by the concerned departments of Government of Azad Jammu and Kashmir; like Health, Rural Development Local bodies and PP&H. So, the relevant departments are also under legal obligation to complete those projects without any further delay.

38. The crux of above detailed discussion is that unless mitigation measures and conditions stipulated in the conditional environmental approvals of EPA AJ&K for both the projects (NJHEP and KHPP) are complied with the operation of the projects constructed or under construction, whatever the case may be, would not be considered as legal and such violation can entail the legal consequences as enshrined in the Environmental Protection Act and other laws. As all the three projects (NJHEP, KHPP and Mangla Dam Raising Project) are located in the territory of Azad Jammu and Kashmir and under the constitutional provisions and according to the understanding of the parties, the water usage charges and share from the net hydel profit of the projects, as given to the other concerned regional Government of Pakistan, the Government of Azad Jammu and Kashmir is also entitled for such financial benefits on the same rates no matter with whatever name. The Government of Pakistan, Government of AJ&K as well as project developers (WAPDA and KHCL), are under legal obligation to finalize and sign the draft tripartite agreements in relation to both the projects (NJHEP and KHPP) within reasonable period, so that no room may be left for complaints.

Therefore, in the light of what has been stated above, the project developers, WAPDA and KHPC are hereby directed to implement all the conditions of EPA AJK approvals in letter and spirit. The construction of water bodies, Sewage Treatment Plants connecting with both the projects as mentioned in the EPA approvals shall be completed within one year regarding NJHP and before the operation of KHPP. The respondents are also directed to complete and execute the draft tripartite agreements in relation to both the projects within reasonable period not later than four months. In case of violation of the terms and conditions of EPA approvals, D.G EPA is directed to initiate the legal proceedings against the concerned persons/authority under law. The minimum E-flow level of the water at NJHP shall not be reduced from 20 cumecs during the lean periods of the year and that of KHPP Weir preferably not less than 39.5 cumecs. However, the condition of EPA of minimum 30 cumecs E-flow shall not be violated by any means at the latter project. The responsible respondents under agreement dated 27.06.2003, regarding Mangla Raising Project are also directed to complete the remaining portion of Haryam Bridge within a period of six months and pay the compensation amount to the affectees, land owners according to the final judgments of the Courts within four months,

they shall complete, maintain and make the facilities, public buildings and institutions (Schools, Dispensaries, hospital and other offices of services builts at various hamlets for Mangla affectees) functional by providing resources and staff. The respondent, Government of AJ&K shall also complete the all schemes, projects for which it received funds from WAPDA within six months. It shall also constitute a Committee consisting of persons of known integrity and uprightness to probe into the causes of the delay of the schemes and if the committee finds any financial irregularities in execution of the schemes, it will nominate the responsible and propose the legal actions against them.

The Government of Azad Jammu and Kashmir shall be entitled to receive the water usage charges and share of net hydel profit, equal to that given to the other concerned regional governments, to be paid by the power producers/ purchasers according to final agreement reached between the parties.

The petitions are disposed of in the manner as indicated above. The compliance report of all the directions, terms and conditions as well as the other measures mentioned hereinabove shall be submitted to the Registrar of this Court for perusal of the Court as well.

MWA/69/HC(AJ&K) Order accordingly.

Case:23 Sheikh Yousaf

2019 C L D 155

[Punjab Environmental Tribunal]

Before Shazib Saeed, Chairperson and Muzaffar Mahmood, Member (General)

DIRECTOR GENERAL ENVIRONMENTAL PROTECTION AGENCY Complainant

Versus

SHEIKH YOUSAF---Respondent

Complaint No. 1516 of 2012, decided on 5th April, 2018.

JUDGMENT

The respondent accused Sheikh Yousaf son of Sheikh Jilal Din is facing trial before this Tribunal.

2. Brief facts of the case are that fifty five tanneries units were inspected for violation of sections 2 and 11 of the PEPA, 1997 in District Sialkot. Unit Sheikh Yousaf Leather Works is situated at Haji Pura Road, Pul Aik Sialkot and is equipped with machine like drums/shaver/tower and splitting etc. Animal hides are the raw material and with the process of washing/splitting/shaving/buffing and cutting the final product is leather. The unit was creating liquid and solid waste and untreated waste water was reported being discharge into the open drains/open plots along with road sides. It was further reported that adverse environmental impact was created in the form of air, water and land pollution. Solid waste, as already mentioned. was disposed of in open areas. The chrome. H_2SO_4, Sodium By Carbonate, Na_2S, Lime, Aluminum Sulphate and Sodium Bi-sulphate were being used by this unit and recommendation were made that the tannery was to be proceeded against under sections 16 and 17 of the Pakistan Environmental Protection Act, 1997.

3. Notice of hearing was given on 20.08.2010 with a direction to appear before Director (North/P&C) EPA Punjab on 26.08.2010 with further directions to bring documents in support of his stance regarding planning about installation of waste water treatment system in conformity with NEQS or availing facility of proposed common effluent treatment plant by establishing the unit at Sialkot Tannery Zone.

4. EPO was issued on 14.12.2010, 06 months time was given to comply the following;

i. Install Effluent Treatment Plant to treat liquid effluents/waste water in conformity with the NEQS and to satisfaction of this Agency

or

ii. Stop operation of pollution generating activities.

5. Non-compliance was reported on 14.12.2010 thereafter the complaint was filed before Federal Environmental Tribunal in February 2012. After 18th amendment in the Constitution of Islamic Republic of Pakistan environment became provincial subject and Government of the Punjab enacted Punjab Environmental Protection Act, 1997 (amended in 2012) by amending the Federal Statute.

6. Before this Tribunal case was taken up for the first time on 30.11.2013 and the respondent was summoned. Then the case was adjourned for about 46 dates. Ultimately accused was charge sheeted on 23.02.2018. He pleaded guilty to the charge got recorded a separate confessional statement but on 15.03.2018 it was observed by the Tribunal that since the complaint was filed before Federal Environmental Tribunal in February 2012 whether copies were delivered to the respondent in terms of section under section 265-C, Cr.P.C. is not known because the interim orders were not sent while transferring this case to this Tribunal. Therefore the copies were delivered to the respondent and accused was again charge sheeted under section 17(1) of the PEPA, 1997 (as amended in 2012). The accused again pleaded guilty to the charge. He desired to make a separate statement which was recorded on 22.03.2018 as under:

"I am the Chief Executive/owner of Sheikh Yousaf Leather Works Sialkot. It came to the notice of EPA that a survey was conducted by District Officer (Environment) Sialkot and operation of my tannery causing pollution to the environment and causing adverse effect by discharging of untreated effluent and waste waster and that exceed the NEQS. There was no system installed for proper disposal of waste water. Thereafter EPO dated 14.12.2010 was issued to the tannery and I was directed to comply the directions mentioned therein within six months. I also failed to comply those directions and I was proceeded against and instant complaint was filed against me. I have already stopped the operation of my tannery since 2011."

7. The accused has pleaded guilty to the charge. He admitted that his tannery was found causing pollution to the environment creating adverse effect by discharging of untreated effluent and waste water exceeding the NEQS. There was no system installed for proper disposal of waste water. He also admitted that he failed to comply with the directions of EPO. He prayed for lenient view.

8. The respondent has admitted the allegations and therefore admitted facts need no proof. This Tribunal has to see what offence the respondent is committing for the last eight years. The accused has stated in his confessional statement that he has stopped the operation of the tannery. This Tribunal requisitioned the fresh Site Inspection Report which was received. The report was sent by Deputy Director Environment Sialkot, it revealed that Muhammad

Fayyaz Inspector conducted survey of the unit on 07.03.2018 at 11:25 a.m. Sheikh Muhammad Yousaf and his son Sheikh Muhammad Idrees were present at the time of visit and the unit was in operation. The unit had installed one drum having electric motor 4 HP, one air compressor and one Chakrram machine in the premises of the said unit discharging waste water without treatment. The report is Mark-A with pictures of the unit. Therefore this stance of the respondent is also negated that he had stopped the operation of the unit.

9. There were two directions in the EPO. Either to install treatment plant in conformity with NEQS or stop operation of the pollution generating activities. In the notice of hearing it was also mentioned that in the alternate, the accused may avail the facility of proposed common effluent treatment plant by establishing the unit at Sialkot Tannery Zone. Respondent has placed on record copy of the allotment letter Mark-B and submits that his son Anees Yousaf Sheikh applied for the plot on 28.02.2009 and the plot measuring one kanal is allotted to him in 2016 in Sialkot Tannery Zone situated on Khambranwala Kalowal Sialkot. In view of the allegation and admission of the accused the provisions of section 16 of PEPA 1997 (as amended in 2012) are violated as the respondent unit had not complied with the directions given in the EPO which is punishable under section 17 of the PEPA 1997 (as amended in 2012).

10. Therefore the respondent found guilty for violating section 16 of the ACT punishable under section 17 of PEPA, 1997 (as amended in 2012).

11. The SIR was conducted on 03.07.2010. EPO was issued on 04.12.2010. Article 12 of the Constitution of Islamic Republic of Pakistan is reproduced as follows;

12 (1) No law shall authorize the punishment of person---

(a) for an act or omission that was not punishable by law at the time of the act or omission; or

(b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

12. In 2010 the penalty for contravention of section 16 punishable under section 17 of PEPA, 1997 entailed punishment of one million rupees. Punjab amendment was made on 28.04.2012 enhanced the punishment of fine to Rs. 5 million by virtue of Punjab Environmental Protection (Amendment) Act, 2012 Act (XXXVI) of 2012. The accused is liable for punishment of fine at the time prevailing in 2010 as mandated by Article 18 of the Constitution reproduced supra. The accused never challenged EPO at any forum as stated by him. Therefore respondent Sheikh Yousaf is convicted in the offence under section 17 for violating the direction under

section 16 of the Act ibid. As far as the quantum of fine concerned since the accused has made confession and placed himself at the mercy of Tribunal with further prayer of a lenient view this Tribunal keeping in view the duration of causing damage to environment by discharging untreated waste water, allotment of plot in Industrial Zone sentence of fine of Rs.500,000/- (Rupees Five Hundred Thousand) will meet the ends of justice. The fine shall be paid by the accused Sheikh Yousaf within a period of 30 days failing which provisions of 386, Cr.P.C. will be invoked against the respondent. The accused is present before the Tribunal. He has been given copy of this judgment free of cost

13. Before parting with this judgment the Agency is duty bound to visit the site to make cognizance of any continues contravention and to proceed further in accordance with law.

HBT/9/PET Order accordingly.

Case: 24 Muhammad Asjad Abbasi

2018 S C M R 2051

[Supreme Court of Pakistan]

Present: Ejaz Afzal Khan, Maqbool Baqar and Faisal Arab, JJ

MUHAMMAD ASJAD ABBASI and others---Petitioners

Versus

IQBAL MUHAMMAD CHAUHAN and others---Respondents

JUDGMENT

EJAZ AFZAL KHAN, J.---Environmental hazard which was reported to be imminent on account of proposed New Murree Project was taken notice of, which found expression in one of the orders passed by his Lordship, as he then was, Mr. Justice Tassaduq Hussain Jillani in the following terms:

"The Report of the International Union of Conservation of Natural Resources (IUCN) submitted to the Government and published on the front page in Daily "The News" dated 29th March 2005 makes startling and shocking disclosures about the apprehended adverse environmental impact of the proposed New Murree Project. The findings, if true, warrant serious attention of all those concerned with the conservation of the Forests, Supply of Clear Water to the Twin Cities of Rawalpindi and Islamabad and the issues of siltation in Simly and Mangla Dams. The issues raised are likely to affect public at large with particular reference to the Fundamental Right enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan, i.e. the Right to life .

The Patriata Forest according to the afore-referred report has a highly fragile eco-system and was declared as reserved forest as far back as 1886 is going to receive the worst blow i.e. at least 50% of the existing standing stock of 1.4 million conifer trees are likely to be cut. Imploring protection of this valuable forest reserve the report maintains that "the development of new township could result in the catastrophes like loss of protective forest cover resulting in more rapid runoff following storm event; higher peak stream flows; increased instability; and increased sedimentation.

"Such adverse changes in watershed hydrologic conditions result in degradation of water quality for the population particularly residing in Islamabad, the report said, demanding, "to avoid such compound disasters and to ensure supply of safe water for twin cities, the valuable Patriata forests have to be preserved." "To develop new city

by cutting sharp slope bedrocks will further aggravate the situation for new city and will cause heavy rain siltation in the Simly and Mangla Dams". This move, it is said, would cause serious damage to the ongoing Mangla Dam Raising project, which was approved at a total cost of Rs. 62.552 billion including foreign exchange component of Rs. 9.6 billion. The main objective of the project was to raise Mangla Dam by 30 ft to regain the lost storage capacity due to silting and heavy sedimentation."

While the New Murree Project may have been motivated to improve, expand and create recreational facilities at the hill resort in question with regard to which none would have any cavil. However, if such a scheme raises serious environmental questions requiring deliberations by Authorities and Experts concerned and if such a deliberative exercise has not been carried out, this Court is under a Constitutional mandate in terms of Article 184(3) read with Article 9 of the Constitution of Islamic Republic of Pakistan to issue appropriate directions to forestall the likely adverse effects on the quality of life in the areas to which reference has been made in the report. But before proceeding any further it would be fair to issue notice and hear learned Advocate General Punjab inter alia on following preliminary queries:-

(i) Whether any environmental impacts survey was ever carried out before approving the New Murree Scheme?

(ii) Whether the Government of Punjab has considered the report of International Union of Conservation of Natural Resources, if so what effect?

Since the issues likely to be raised would require interpretation of Environmental Laws, it would be appropriate to call upon Dr. Pervaiz Hassan to appear and assist the Court as amicus curiae. Notice shall also issue to Director General, Pakistan Environmental Protection Agency, Islamabad.

Let this matter be placed before the Honourable Chief Justice of Pakistan for consideration and constitution of an appropriate Bench. Subject to the order to be passed by him the case shall be fixed before the Bench so constituted for 11.04.2015. Till then no tree shall be felled and no hill shall be tinkered with in Patriata pursuant to the project in question."

Following the order reproduced above, many other directions and orders were passed by this Court. In the meantime, WWF prepared an assessment of ecological significance in respect of the proposed New Murree Development Project which being relevant in this case also deserves a look and thus runs as under:

The following brief describes the ecological significance of the New Murree Project area and the resulting devastating environmental impacts visualized due to the proposed New Murree Development Project (NMDP). The proposed NMDP propositions the development

of Patriata Reserved Forests (Compartments 21 to 38), Murree Tehsil, Rawalpindi District, an area of 4,111 acres, into a 'tourist city of international standards.'

Located at the highest point in the Punjab (about 2,223 m), the project area is part of the Himalayan hill tract that includes one of the best remaining Himalayan (temperate) forest areas in Punjab. There are two ecological zones present in the area, the 'moist temperate coniferous forests' (Blue pine or kail zone) and the 'subtropical Chir pine forests' (Chir zone); the former being the dominant zone. Considered particularly ecologically rich, the area boasts the existence or probable occurrence of more than 200 plant species, 146 bird species, 15 mammals, 22 reptiles, and 6 amphibians.

The NMDP proposes development projects in the only surviving, intact habitat of the Blue pine ecosystem - the other habitat being badly degraded due to 'its proximity to Murree; this will result in a regrettable fragmentation of this periphery is liable to become swarmed by unplanned housing development schemes, such as those surrounding Bhurban and Murree. As a result, other than the White oak and Yew trees, which are already locally threatened, an additional 17 commonly used medicinal plants will be endangered due to the development operations.

The Patriata hill tract has the richest flora to be found in the country. According to a recent study conducted by Pakistan in 2008, a total of 224 vascular plants were identified from the study area, belonging to 166 genera and 71 families. A high proportion of endemic species and, old forests render the area the status of a unique habitat. Since the area contains a very dense patch of the only remaining tract of pine trees in the Punjab Province, it is highly significant in terms of holding a rich diversity of fauna and flora.

The Himalayan forest vegetation provides relatively undisturbed habitat for wildlife species, sustaining their needs for food, water and shelter. Any change in the habitat structure will affect the variety and population of wildlife species. Changes in the vegetation structure will definitely affect the wildlife fauna associated with them and, conversely, changes in faunal composition as well as influence the vegetation it is complexly integrated with. Leopards, once reported from the area, are no longer sighted; their disappearance can threat to the already decreasing population Common Leopards in the Murree hills. The Koklass Pheasant, the White-Crested Kalij Pheasant, and the Paradise Flycatcher are some of the unique bird species inhabiting the Patriata forests, which will also be endangered.

Natural forests form a vital part of catchments, guaranteeing better quality water with lower levels 20f sediments and pollutants. The loss of forest cover and subsequent conversion to other land usage is rapidly being identified as the major reason for the depletion and contamination of freshwater supplies, aggravating the looming water

crisis that is threatening the whole country. Since the concerned area is an integral part of the important watersheds of Mangla and Simly dams, the proposed development plan, which entails large scale decimation of this surviving tract of forest, will have massive negative repercussions. Since much of the remaining catchment area of these dams has already been built up, protection of this region is imperative to guarantee groundwater replenishment along with regulation of water table, and to prevent rapid soil erosion - with consequential silting of water channels and dams downstream, flash floods and landslides.

The Government of Pakistan has pledged to preserve and rehabilitate the country's remaining natural forests in a number of policy documents, for example, the National Environmental Policy 2005, that commits to increase forest cover to 5.6% by 2010 and to 6% by 2015. Even the Pakistan Poverty Reduction Strategy Paper (PRSP-2003) makes projections to increase forest cover from 4.8% to 5%. This project is, thus, in direct contradiction with these policies and goals to conserve natural forests.

The FAO report, "Situation and Developments in the Forest Sector-2005", mentions that Pakistan is losing forest cover at the rate of 1.5 % each year. This is one of the worst rates amongst the 48 Asian countries that have been listed. The current distribution reveals decline (almost 40%) in the char pine zone, which has been predominantly exploited for agricultural and residential land use, along with a significant decrease (approximately 51%) in blue pine forest compared to estimated forest cover in the past. Pakistan has only 1.8% productive forests out of the total 3.1% existing forest cover. Under these alarming conditions, it is imperative that remaining natural forests in Pakistan, which includes the Patriata forest, must be protected from further degradation.

The Project objectives and components have kept changing and have still not been clearly defined or been disclosed to the public. At the time of this report being written, the New-Murree Project included a 6 Star hotel along with other hotels, exclusive housing units, golf course and mono-rail. All these mentioned projects are absolutely inappropriate for a unique ecological area, since the heavy machinery required during construction portends severe damage to the ecosystem. In conclusion, the Punjab Government is advised by WWF Pakistan to abandon the existing New Murree Development scheme, which is completely unsuitable for this unique and environmentally rich region. In its place, the Punjab Government can undertake more suitable ecotourism initiatives, which conserve the unique natural and cultural heritage in Punjab and provide tourist facilitates in conformity with local traditions, for the benefit of all levels of society."

Learned ASC appearing on behalf of the petitioner contended that where the orders passed by this Court from time to time and paragraph 4 of the judgment rendered in the case of Suo Motu Case No. 10 of 2005 (2010 SCMR 361) are very clear in their tone and

tanner, nobody could have continued with the work of construction and that any work done in contravention of the orders of this Court is liable to be undone and the persons at the back of such work are liable to be proceeded against and punished. He next contended that the forest which is a source of natural beauty and one of the causes of rainfalls is being exterminated; that the land comprised in shamilat-i-deh cannot be broken up for cultivation or any other purpose which is not envisaged by the wajib-ur-arz; that taking possession of a few chunks of land comprised in shamilat-i-deh would amount to partition which is not only against the provisions of wajib-ul-arz but also against the enactments passed from time to time and the rules made thereunder. The learned ASC maintained that the property comprised in individual proprietary could be used as a building site if an NOC is issued in conformity with section 12 of the Punjab Environmental Protection Act 1997. The learned ASC next contended that any waste, sewerage, drainage or any other form of garbage flowing from houses, building, hotels and restaurants thus constructed in the highlands would not only affect the catchment areas but fill them with polluted water. Timely action, the learned ASC added, would be the need of the hour else the land of beautiful landscapes would turn into heaps of stinking dirt. Inaction and acquiescence of the government, the learned ASC went on to argue, facilitated the destruction of the fauna and flora. Simly Dam and Rawal Dam, the learned ASC while winding up his arguments contended would also be the victims of deforestation, construction and consequences flowing therefrom.

2. During the course of arguments, we noticed that a huge property comprised in shamilat-i-deh has been broken up for construction and many other alike purposes in violation of the terms of wajib-ul-arz and the Forest Act 1927. We on our own asked the learned Advocate General Punjab to examine this phenomenon and submit a detailed report in this behalf along with the record of rights, field map and wajib-ul-arz of the respective villages. He accordingly submitted his report along with the relevant record. When we asked him as to how shamilat-i-deh could be broken up for construction etc he could not give any satisfactory answer. We, having realized the gravity of the situation and its adverse bearing on the interest of the government and the environment around, took notice of this aspect of the case and asked the learned ASCs and Sr. ASC of the parties to address us on this issue.

3. Learned Sr. ASC appearing on behalf of Bahria Town contended that any restriction imposed on sale or partition of shamilat-i-deh is violative of fundamental rights; that any such restriction would be void by virtue of Article 8 of the Constitution of the Islamic Republic of Pakistan. He next contended that whether the proposed construction or the construction already completed is against the provisions of the Punjab Environmental Protection Act is a matter pending before the Environment Tribunal, therefore it would not be just and proper to meddle in such matters while exercising jurisdiction under Article 184(3) of the Constitution of the Islamic

Republic of Pakistan. He next contended that some restrictions may have been imposed on the owners of the shamilat-i-deh by the wajib-ul-arz but their effect has been neutralized by section 3 of The West Pakistan Land Disposition (Saving of Shamilat) Ordinance 1959. Even otherwise, the learned Sr. ASC added, wajib-ul-arz cannot limit, diminish, curtail or extinguish any right in the land or property without the consent of the owner, therefore, the owner of shamilat-i-deh can partition it or dispose it without the intervention of the government. The learned Sr. ASC contended that where a great deal of construction work has been done, many plots have been transferred and superstructure has been raised thereon following the previous practice, right or wrong, any order of this Court undoing all that has been done would not only create complications but also deprive the persons investing in the project of a right accrued which is not in conformity with the dictum of this Court rendered in the case of Government of Pakistan v. Manzoor Brothers (1995 SCMR 516). The learned Sr. ASC next contended that no exception could be taken to the sale and partition of the property where none of the co-owners in shamilat-i-deh has raised even a whisper in this behalf. Learned Sr. ASC lastly argued that if this Court comes to the conclusion that Shamilat land could not be partitioned, broken-up for construction or any other purpose, any declaration given by this Court cannot operate retrospectively. The learned Sr. ASC to support his contention placed reliance on the case of Application by Abdul Rehman Farooq Pirzada v. Begum Nusrat Ali Gonda v. Federation of Pakistan (PLD 2013 SC 829).

4. Mr. Maulvi Anwar-ul-Haq appearing for Commoners Sky Garden, respondent No.4 herein, contended that area constructed by it falls within the private ownership; that the construction was preceded by issuance of a proper NOC by the Rawalpindi Development Authority ("RDA") and Environmental Protection Agency ("EPA"); that the respondent No. 4 has also become the owner in shamilat-i-deh by the dint of sale but since the proposed construction is carried in the private ownership the arguments addressed at the bar by the petitioner have least bearing on its case. Even wajib-ul-Arz of village Manga, the learned ASC maintained, does not restrict partition of property nor does it recognize any right of the government in the shamilat-i-deh, therefore, his case has to be looked at differently. Learned ASC by referring to clause 4B of the notification dated 21 January 1941 issued under section 76(c) of the Forest Act 1927 contended that it does not tend to impose any restriction on the construction raised by respondent No. 4 when it has neither broken up any area of shamilat-i-deh nor sought partition thereof.

5. We have gone through the record and considered the submissions for the learned ASCs for the parties.

6. Before we deal with the questions raised in these petitions it is worthwhile to see what is wajib-ul-arz, how does it come to being, what role does it play in the administration of shamilat-ideh, what rights does it confer and what restriction does it place on the village proprietary body and what interest the government of the province

has in shamilat-i-deh, are the questions to be addressed before any owner of shamilat-i-deh or vendee therefrom can be allowed to go ahead with the breaking up of the land for construction etc. Wajib-ul-arz is a village administration document describing existing customs regarding rights and liabilities of the village proprietary body and the government. This document is an outcome of consensus of the village proprietary body and the government reached at the time of settlement of the village. In the case of Haji Qudrat Ali v. Government of N.W.F.P., through Secretary, Law Department, Peshawar (1993 SCMR 381) this Court in paragraph 10 of the judgment quoted with approval the judgment rendered in the case of Mst. Bhag Bhari v. Mst. Bhagan (PLD 1954 Lah. 356 at 360) dealing with the entries in a wajib-ul-arz held as under:

"Entries in a Wajibul Arz may be of two kinds. They may be statements of local custom or usage or they may be recitals of agreements. As statements of custom or usage they are strong evidence of the existence of such custom or usage but they have only an evidentiary value. Agreements incorporated in the Wajib-ul-Arz are however binding but only on the parties to the agreements, and even in such cases it is open to a party to prove that in fact no such agreement was entered into though the task would be difficult."

Before we go ahead, let us examine the relevant clauses of the wajib-ul-arz of each of the villages forming subject matter of the controversy in this case. The first in the sequence is the wajib-ul-arz of village Manga which reads as under:

Wajib-ul-arz of village Sulkether has identical content which reads as under:

Wajib-ul-arz of village Kathar being replica of wajib-ul-arz of the other villages reads as under:

The wajib ul arz of village Mangal is also identical in its content and context which reads as under:

12-0 -12 143 -1 -4 10-6-1 2405 -0- -5-

2230-0-14 8 -7-14

A perusal of the relevant clauses of the wajib-ul-arz of each of the villages reproduced above shows that the rights of the proprietary body of the village in shamilat-e-deh are neither exclusive nor unlimited. Their rights in shamilat-e-deh are confined to grazing their cattle etc. and not beyond that. Sale of the property comprised in shamilat-i-deh is not restricted but it cannot be lost sight of that the vendee under no circumstances can acquire a title better than the one the vendor himself has. As wajib-ul-arz of each village provides that any tree small or big growing in ups and downs of the property would vest in the government, such right cannot be extinguished with the sale of the property. Nor can the vendee be allowed to act in derogation of such clauses while dealing with the property. It is in view of this essential aspect that it has been provided in the wajib-ul-arz that shamlat-i-deh could neither be broken up for cultivation nor partitioned without the permission of the government. The rationale behind this recital is to protect the rights of the government on the one hand and those of the owners on the other. This is what has been provided under Rule 4A framed under section 76(c) of Forest Act 1927; that no person shall clear or breakup for cultivation or any other purpose any land in the area reserved as charagaha (Forest and pasture Land) and this is what is provided in rule 4B that no person or persons in any estate shall partition jointly owned lands (shamilat-i-deh) without the sanction of the provincial government. If this property is allowed to be broken up for cultivation or partitioned without the permission of the government, quite obviously, the government would be at the losing end. We do not understand how suitable chunks of land were chosen and taken possession of without having recourse to the legal proceedings and without the permission of the government in gross, grave and glaring violation of the law governing the partition of such land. We do not understand how the trees and bushes running in millions were cut from the shamlat-i-deh and how was it converted

into a building site. We also do not understand how the government slept over its rights and sat around like an idle spectator when everything was ruined and run amuck by the Bahria Town or for that matter any other builder without realizing that fauna and flora are better served by the natural growth of trees than the mountains of iron, cement and concrete. Why such sights did not boil the blood of the officials working in the revenue hierarchy, right from the patwari up to the Senior Member Board of Revenue? Why did the officials of the Forest Department, right from the Forest Guard to the Chief Conservator and the Secretary collude with the Bahria Town in its predacious motives and piratical designs? What elevated the Bahria Town and its managers to a level where the nabbing hands of the law enforcers could not reach them notwithstanding all these excesses and atrocities were reported to the NAB. Government land was aggressively taken possession of and lavishly enjoyed by a cabal of land grabbers but those sitting in the chambers of power at every level aided and abetted them as if it is not for them to prevent such acts and that some force from above or abroad would land in to prevent them. It is something terrible because official collusion of this magnitude may not have been experienced even in the nightmare. We against this backdrop would be rather callous and even cruel to see the landgrabbers grab the property and destroy fauna and flora of the area and do nothing to stop, if not break, the hand behind it.

7. Now the question arises how far section 3 of The West Pakistan Land Disposition (Saving of Shamilat) Ordinance, 1959 neutralizes the effect of the wajib-ul-arz as was contended by the learned Sr. ASC for Bahria Town. Before we appreciate this aspect of the case it is worthwhile to reproduce section 3 of the Ordinance which reads as under:

"**3. Shamilat not included in disposition of land unless specifically mentioned as subject matter of the disposition**.---(1) Notwithstanding any law, usage or custom to the contrary, in any disposition of land, whether testamentary or otherwise, effected by the maker by means of a writing or orally and whether made before or after the commencement of this Ordinance, words or phrases of a general nature, purporting to convey rights or interests incidental, contingent, or collateral, to that land, shall not be so construed as to include therein the Shamilat or any portion thereof appurtenant to such land, unless such Shamilat or a portion thereof has been specifically mentioned as the subject matter of the disposition.

(2) This section shall not affect any decision of a competent court or authority given before the commencement of this Ordinance:-

(a) if it is not open to review, appeal or revision, or

(b) if it is so open, no such proceedings have been taken, and the decision has consequently become conclusive between the parties."

A perusal of the provision reproduced above shows that the disposition of any land effected by the owner by means of a writing or orally made before or after the commencement of the Ordinance, words or phrase of general nature, purporting to convey rights and interest incidental, contingent or collateral to that land shall not be so construed as to include therein shamilat or any portion thereof appurtenant to such land unless shamilat or portion thereof has been specifically mentioned as the subject matter of the disposition. This section by no stretch of imagination neutralizes the effect of any of the clauses of wajib-ul-arz dealing with shamilat-i-deh nor does it override or extinguish rights of the government in shamilat-i-deh. We, therefore, do not agree with the argument of the learned Sr. ASC for the Bahria Town. The argument that such restriction being inconsistent with the fundamental rights shall be void is devoid of force when the wajib-ul-arz is an outcome of the consensus between the village proprietary body and the government of the province, therefore, neither the village proprietary body nor the government can resile therefrom. This Court in the case of Ghulam Hussain v. Allah Baksh (1991 SCMR 1386) while interpreting section 3 of the Ordinance, has already held as under:

"As regards the three last cases, it may be noted that these related to share in the shamilat. In the first one it was held that since plaintiffs did not base their claim upon any right as proprietors of any land assessed to land revenue, they were not entitled to the share in the shamilat. This was in view of the fact that only land holders had/have any right in shamilat. The Ordinance I of 1959, however, envisaged that even if land-holding is sold it will not be taken that Shamilat rights have also been sold unless specifically so stated: The right in Shamilat was no more contingent on land holding. The reasons may be that the legislature took into account the fact that because of drought or famine, a landholder may sell his land, go away to any other place or in the neighbourhood for livelihood and still retain his cattle and graze them in the old pasture of shamilat, or, that he was not to be ousted from the community by depriving him of his share in the shamilat. Reasons may be diverse but it is clear that the Ordinance recognized two rights independently of each other and not contingent, i.e. right in the land proprietorally held a right in the shamilat land. The second case too, is based on contingency of land holding for share in shamilat and if the former is lost by adverse possession the latter is also lost. But this too is prior to the Ordinance. In the third case, the right was lost because from cause of action suit was not filed within limitation."

8. The argument that where wajib-ul-arz of village Manga does not restrict partition of property nor does it recognize any right of the government in the shamilat-i-deh, therefore, the case of respondent No.4 has to be looked at differently is not correct as the wajib-ur-arz of village Manga clearly provides that the property comprised in shamilat-i-deh would not be broken up for cultivation or any other purpose nor would it be partitioned without the permission of the

government. Rules 4A and 4B of the Rules of Guzara lands or forest and waste lands of Murree and Kahuta Tahsils, other than Reserved and Protected Forests under section 76 (c) of the Act XVI of 1927 as mentioned-above also provide similar restrictions. The argument that where a great deal of construction work has been done, many plots have been transferred and superstructure has been raised thereon following the previous practice, right or wrong, any order of this Court undoing all that has been done would not only create complications but also deprive the persons investing in the project of a right accrued which is not in conformity with the dictum of this Court rendered in the case of Government of Pakistan v. Manzoor Brothers (supra) has not impressed us as the departure from the rules has its origin in collusion rather than practice. Needless to say the one or any number of wrongs cannot make a right. The case of Government of Pakistan v. Manzoor Brothers (supra) being distinguishable on facts and law has no relevance to the case in hand. The argument that if this Court comes to the conclusion that Shamilat land could not be partitioned, broken-up for construction or any other purpose, any declaration given by this Court cannot operate retrospectively has also not impressed us when everything in this case appears to have been done collusively. The judgment rendered in the case of Application by Abdul Rehman Farooq Pirzada v. Begum Nusrat Ali Gonda v. Federation of Pakistan (PLD 2013 SC 829), too, has no relevance to the case in hand when the controversy as to the rights of the owners in shamilat-i-deh has already been set at rest by this Court as back as 1991 in the case of Ghulam Hussain v. Allah Baksh (supra). The argument that no exception could be taken to the sale and partition of the property where none of the co-owners in shamilat-i-deh has raised even a whisper in this behalf is also devoid of force because the interest of the co-owner in shamilat-i-deh is not exclusive and unlimited as held above and that no property comprised in shamilat-i-deh could be partitioned without the permission of the government and without having recourse to the legal proceedings under the relevant law.

9. As a sequel to what has been discussed above, we have no hesitation to hold that any area of shamilat-i-deh broken up for cultivation or any other purpose, partitioned, taken possession of or constructed in violation of the wajib-ul-arz and rules 4A and 4B of the Rules mentioned-above, being illegal and unlawful is of no effect. The area thus broken up, partitioned, taken possession of or constructed be retrieved by the government forthwith. All construction work in shamilat-i-deh be stopped forthwith. The construction work carried in private ownership would continue only if it is okayed by the RDA and EPA. The persons and officials of the revenue department be proceeded against. The NAB is directed to investigate the case and file references against all those who are found responsible for committing, aiding and abetting the crime at any level or in any form.

10. If at all a great deal of construction work has been done on the property comprised in shamilat-i-deh, plots have been transferred,

superstructure has been raised thereon and third-party interest has been created therein, a spade would remain a spade and an illegal act would remain illegal. However, the questions what to do with the allottees, how to deal with their cases and what remedial measures could be taken in this behalf shall be dealt with by the implementation Bench. We, therefore, request the Honourable Chief Justice of Pakistan to constitute an implementation bench in this behalf to deal with the questions mentioned above. It is, however, added that the Provincial Government and the Forest Department would take care of the areas of the Shamilat-i-deh to develop it by afforestation and reforestation.

11. For the reasons discussed above, Criminal Original Petitions Nos. 57 of 2015 and 42 of 2017 in Suo Motu Case No. 10 of 2005 as well as Criminal Misc. Applications Nos. 1879 of 2016, 1292 to 1293 and 1926 of 2017 in Criminal Original Petition No. 57 of 2015 and C.M.A. No. 6998 of 2017 are disposed of in the terms mentioned above.

Sd/-

Ejaz Afzal Khan, J

I had the privilege of going through the judgment authored by my learned brother Justice Ejaz Afzal Khan, but have not able to persuade myself to agree with the same and would therefore respectfully add my dissenting note.

Sd/-

Maqbool Baqar, J

I agree with the opinion of my learned brother Justice Ejaz Afzal Khan.

Sd/-

Faisal Arab, J

ORDER OF THE COURT

With the majority of two by one, the final order of this Court is recorded in paragraphs 9 and 10 of the majority judgment.

Sd/-

Ejaz Afzal Khan, J

Sd/-

Maqbool Baqar, J

Sd/-

Faisal Arab, J

MAQBOOL BAQAR, J.---The above criminal original petition was filed by the petitioners alleging contempt/violation of judgment of this Court rendered in Suo Motu Case No.10 of 2005 on 31.7.2009.

2. The above Suo Motu proceedings were initiated with regard to environmental hazard that was apprehended as a result of the development/ construction of New Murree Project in compartment Nos.21 to 38 of Patriata reserve forest, Tehsil Murree, District Rawalpindi over an area of 4111 acres. Various orders were passed, and several reports were submitted during the pendency of the above proceedings. However on 28.7.2009, this Court was informed that the New Murree Development Authority has been dissolved and the New Murree Development project has been disbanded. The Court thus raised the following two queries for the official representatives appearing in Court to respond to:-

(1) Why the New Murree Development Authority has been dissolved?

(2) What measures the Government of the Punjab has taken to ensure that in future no project detrimental to the environment would be launched?

In response to the above, the Secretary Environment appeared before the Court on 31.7.2009 and submitted that NOC for Environmental Impact Assessment (EIA), was never issued by the Government of Punjab because the environment department was not in favour of New Murree Development Project. He submitted a statement enumerating various measures enforced, to protect the environment in and around Murree. The following of the said measures may be found relevant for the present purpose:-

"(ii) All kinds of construction and development activities are banned in these areas.

(iii) Across the board application of sections 12 and 16 of the Act is being ensured in these areas. The District Officer (Environment) Rawalpindi has been directed to carry out effective monitoring of these areas.

(iv) All kinds of development activities are banned along both sides of Murree Express Way.

(v) No construction allowed within 100 meters along both sides of Murree Express way.

(ix) Proponents of thirteen (13) properties i.e. M/s. Moin and Jan Associates, M/s. Quality Apartment Phase-II, M/s. Tourism Development Corporation of Punjab, Awan Market, Abbasi Market, Gulistan Market, Raja Hafeez Market, Al-Khair Market, Ajmal Market, Raftar Abbasi Market, Saad Market and M/s. Hakas (Pvt.) Ltd. are being proceeded against under section 16 of the Act ibid (Environmental Protection orders have been issued to them).

(x) One proponent Messrs Judicial Town (Housing Scheme) has been summoned for hearing under section 16 of the Act ibid, whereas Messrs Commoner garden, Messrs Husnain Resorts-I have been advised to restrain from carrying out any constructive/ development activity and obey environmental laws."

This Court after narrating the relevant facts and incorporating the relevant portion of various reports submitted during the proceedings, and keeping in view the above reports and assessment, and particularly assessment of ecological significance prepared by WWF, whilst holding that there was no probability of the revival of the project, disposed of the above proceedings through judgment dated 31.7.2009 in the following terms:

"7. It is important to note that in view of the above reports including a comprehensive assessment of ecological significance report prepared by the WWF, there was no probability of the revival of the project. At the time when the project was started, the apprehension of the environmental experts was that nearly 4000 trees (one per cent of the total tree population of the area) would be affected by the aforesaid project, which, in turn, would adversely affect the Patriata Forests, which were responsible for boosting high average of rainfall anomaly in the country (around 1.77 millimetre) as it was situated in the catchments area of simly and rawal dams, which provides drinking water to almost half of the population of Rawalpindi and Islamabad. It is noteworthy that all over the world national parts are developed to preserve flora and fauna facing threat of extension in the wake of modern-day-life development projects including mushroom growth of housing projects, recreational facilities, etc. The need is to sensitize the general public to the fundamentals of sustainable development so as to achieve the goal of a healthy environment, not only for the present population, but also for the future generations; the concerned agencies of the Government including Environmental Protection Agencies at different levels have a heavy onus to discharge in this regard. The Government of the Punjab, considering the environmental hazard posed by the New Murree Development Project, has taken a right decision in disbanding the same. Since the project has been disbanded and presently there is no threat of environmental hazard in the area on account of the project, no further action is called for in the instant proceedings. The suo motu has fructified and the same is disposed of accordingly."

3. However, through the above petition, the petitioners, namely, Muhammad Asjad Abbasi, Muhammad Faiz and Muhammad Imran, alleged that construction is being raised in Mouzah Mengal and Khatar of Tehsil Murree in violation of the above judgment. However the later two did not pursue their petition.

4. Sardar Muhammad Aslam, learned ASC for the petitioner, in order to substantiate the petitioner's claim that the judgment is being violated, referred to paragraph 4 thereof wherein the measures said to have been enforced as contained in the statement of

Secretary Environment were incorporated. He submitted that in view of the foregoing no construction work could have been undertaken or continued in the entire Tehsil Murree. Learned counsel emphasised that the construction work is being carried out in the land comprising in Shamalat-e-Deh, which land cannot be broken up for cultivation, or for any other purpose not envisaged by the relevant Wajabul Arz, and that such land can also not be partitioned in violation of the provisions of Wajibul Arz. The learned ASC contended that the subject construction is not only impermissible under the relevant Wajibul Arz, but is also violative of the provisions of Forest Act, 1927 and the Rules framed thereunder.

5. On the other hand, Mr. Aitzaz Ahsan, learned Sr.ASC appearing for the purchasers of the property in Commoners Flower Valley, and on behalf of Bahria Town respectively, submitted that in the first place the purported contempt application is not maintainable as neither is there any order banning or restricting any construction or development activity beyond 4111 acres land of patriata forest, contained in the judgment dated 31.7.2009 of this Court, nor were the proceedings in the Criminal Original Petition No.57 of 2015 related to any land other than the above land of Patriata forest. Learned counsel further submitted that paragraph 4 of the judgment dated 31.7.2009, merely refers to the statement made by Secretary Environment, incorporating the measures said to have been enforced by him to save/avoid environmental degration. Mr. Ahsan further submitted that the perusal of the various measures as enumerated in the aforesaid paragraph make it quite clear that in fact the ban was enforced on carrying out construction without complying with the provisions of sections 12 and 16 of the Pakistan Environmental Protection Act, 1997, and that even otherwise such measures/restriction did not form part of the operative part of the judgment dated 31.7.2009, and therefore the purported contempt application was/is liable to be dismissed. The learned Sr. ASC further submitted that through this contempt petition the petitioner, did not raise any issue pertaining to Shamalat-e-Deh and it was only during the course of arguments that such issue was raised on their behalf. Mr. Ahsan further submitted that contrary to the claim of the petitioners none of the relevant Wajibul Arz placed any restriction on cultivating the land comprising Shamalat-e-Deh, and/or using the same for raising any construction thereon. He submitted that even otherwise the provision of Wajibul Arz did not have the force of law and as defined/described by section 39 of the West Pakistan Land Revenue Act, 1967, "Wajibul Arz" is merely a statement of custom respecting rights and liabilities in the estate, the document has also been so defined by J.M.Douie in his famous book titled "Settlement Manual" in the following words:-

"The Wajib-ul-Arz, or village administration paper, should be a record of existing customs regarding rights and liabilities in the estate."

He submitted that though it has been recognized that at times Wajibul Arz may be a recital of the agreements, but such status

cannot be conferred upon the documents, without their being any proof of its being so, whereas in the present case there is absolutely no proof that the provisions contained in the relevant wajibul Arz are a result of any agreement amongst the village proprietary body and the government, and therefore the same cannot be used to place any restriction on the proprietors of the land constituting shamalat. The learned counsel referred to section 3 of the West Pakistan Land Disposal (Saving of Shamilat) Ordinance 1959, which reads as follows:-

"**3. Shamilat not included in disposition of land unless specifically mentioned as subject matter of the disposition**.---(1) Notwithstanding any law, usage or custom to the contrary, in any disposition of land, whether testamentary or otherwise, effected by the maker by means of a writing or orally and whether made before or after the commencement of this Ordinance, words or phrases of a general nature, purporting to convey rights, or interests incidental, contingent or collateral, to that land, shall not be so construed as to include unless such shamilat or a portion thereof has been specifically mentioned as the subject matter of the disposition."

He submitted that the above provisions clearly recognise the right to sell his share by the joint owner in the Shamalat-e -Deh, and thus any restriction on the rights of such owner to alienate or sell his share in the shamalat would be violative of the above provision, and also of his fundamental rights, as enshrined/protected by the Constitution. Learned counsel referred to the specimen form XXXVI, as prescribed under Rule 72 of the West Pakistan Land Revenue Rules, 1968. Such form is titled as "Statement of custom (Wajibul Arz)", and the first heading/item of custom as contained therein reads as follows:-

(1) Common land, its cultivation and management, and the enjoyment of the proceeds thereof."

Learned counsel submitted that from the very first content of the form prescribed for Wajibul Arz, it can be seen that the common land is certainly cultivatable and there is no restriction on cultivating the same as wrongly claimed. Mr. Ahsan further submitted that the provisions of Wajibul Arz are not the same in respect of all the Mouzahs. He pointed out that in respect of Mouzah `Mengaf, there is no restriction on partitioning shamilat, and in Mouzah `Khattar', there is no Shamalat-e-Deh, whereas the entire land constituting Shamalat-e-Deh in Mouzah `Sallchater' has been transferred and mutated in the name of the original owners thereof according to their respective shares. The learned counsel contended that there is absolutely no basis for the claim that the rights in the Shamalat-e-Deh are confined merely to grazing cattle and no more, as neither the relevant Wajibul Arz nor any law places any such restriction. As per the learned counsel, by curtailing the rights and privileges of the owners of Shamalat-e-Deh and restricting its user, merely as grazing grounds, would remove the distinction between Shamalat-e-Deh, the land comprising therein is individually owned

by the residents of the Mouzah proportionately, and the land comprising `Rafah-e-Aam.'. Learned Sr. ASC also submitted that no trees have been cut by his clients in violation of any law, or the contents of the Wajibul Arz and has in fact deposited Rs.20 million with the forest department as 'replenishment charges' and has also planted more than 1.4 million trees in and around its projects.

As regards Rules 4-A and 4-B as contained in the notification No.171 dated 19.3.1909, learned counsel submitted that the Rule 4-A does not pertain to Shamalat-e-Deh but is applicable to the area reserved as Chirah Gah, and is thus not relevant whereas Rule 4-B only placed a condition of obtaining sanction of the provisional government before the Shamalat-e-Deh is partitioned. He submitted that such restriction has not been recognized by the relevant law, being the West Pakistan Land Disposal (Saving of Shamilat) Ordinance 1959 which was promulgated long after the above rules. Mr. Ahsan submitted that the said Ordinance, rather than placing any restriction on the sale of Shamalat land, in terms of section 3 thereof, recognises the owner's right to sell his share therein. As per learned counsel the purported restriction imposed through rule 4-B cannot even otherwise be sustained in view of the right to enjoy or use the property as enshrined in Articles 8, 9, 23 and 24 of the Constitution and that in terms of Article 23, a citizen's right to acquire, hold and dispose of property could only be subject to the constitution or any reasonable restriction imposed by law whereas, as noted above, the relevant law, being West Pakistan Land Disposal (Saving of Shamilat) Ordinance 1959, does not place any restriction on the right to sell Shalamat lands.

Reverting back to Rule 4-B ibid, Mr. Ahsan submitted that though the said rule requires government's sanction for partition of Shamalat land however there is no rule imposing any penalty on partition without a prior sanction and therefore such sanction can also be granted ex-facto. Non -compliance of the requirement prescribed through Rule 4-B does not call for confiscation or retrieval of the land. More so when partitioning or alienating the shamalat land has been a long standing practise and custom, which as noted earlier is not contrary to the relevant law. In support of his contention, the learned Sr. ASC referred to a document containing details about various projects/buildings situated in Shamalat-e-Deh in Rawalpindi and Islamabad, which contains as many as 28 different buildings, official and private, including public buildings such as public hospitals, colleges, housing societies and also the Rawalpindi Bench of the Lahore High Court, and Shifa Eye Hospital, built on such land. The document also contains a note to the affect that in the various mouzahs in the Potohar region, including Islamabad, 50% of the land comprises Shamalat-e-Deh, and all have been partitioned amongst its owners.

The position that emerges from the foregoing is, that the only objection raised on behalf of petitioner, to the subject construction/ development is that such is being done in Shamalat land in violation of the contents of the relevant Wajibul Arz, in as much as, the

relevant Wajibul Arz allegedly provides that the land therein cannot be partitioned without the sanction of the government, and that the trees grown within the shamalat land shall be presumed to be owned by the government. In the first place as noted earlier, the document, Wajibul Arz could either be a statement of local custom and usage, or can be a recital of agreements. Since nothing has been placed before us to show that the relevant wajibul arz have been prepared with the consent of the village proprietary body and the government, rather the Advocate General Punjab during the course of his arguments has categorically submitted that the same are not a result of any agreement, we cannot therefore treat the same as agreement, and can only treat them as statement of local custom or usage. Whereas in view of Article 8 of the Constitution any custom or usage or even law, so far it is inconsistent with the fundamental rights conferred by the Constitution, shall, to the extent of such inconsistency be, void. And as noted earlier, contrary to the relevant Wajibul Arz and the rules framed under the Forest Act, which rules have been discussed hereinbefore. The relevant law, being West Pakistan Land Disposal (Saving of Shamilat) Ordinance 1959, which "provides for a uniform interpretation of general expression with regard to dispossession of Shamilat" In terms of section 3, recognizes the right of an owner in Shamilat land to sell his share therein. Furthermore any restriction, either through Wajibul Arz, or any rule, which is inconsistent to or in conflict with the provisions of Articles 23 and 24 of the Constitution are void. In any event rule 4-A ibid, as noted above, has no relevance, whereas Rule 4-B merely requires that the partition be made with the sanction of the government, and as noted earlier, the partition not being contrary to any law, can always be sanctioned subsequently also. The partitioning of the Shamilat land has been in practice since long and as per the documents referred to hereinabove, almost 50% of the land in Potohar region including, Islamabad, comprises of Shamilat and the same has been partitioned amongst its owners, and a number of housing project and buildings, such as the High Court building, Shifa Hospital and Fauji Foundation Hospital, are constructed on such lands. As regard the cutting of the tress, as noted above, Bahria Town claims to have deposited substantial amount towards replishment charges and to have planted a large number of trees in the area. Further more the question of compliance or non-compliance of the environmental laws and as to whether the subject construction/ development is causing any damage to the environment and ecology are sub judice before the Environmental tribunal. In view of the foregoing it would not be just and fair to order retrieval of the subject lands but the issue requires indepth and detailed hearing so that the same be decided after thrashing out all the material aspects of the case, and by keeping in view the relevant law, and its implications, we also need to be mindful of the fact that substantial construction and physical development has already taken place and the government of Punjab has never raised any objection to the utilization of the shamilat land for the purpose as done in the present case, and further according to the AG Punjab none from the village proprietary body raised any

objection to the subject construction/development before any governmental authority and thus a large number of people have invested their life long savings and the money they raised through bank loans, in buying properties therein. It would therefore be appropriate that the petition be fixed for further hearing.

MWA/M-13/SC Order accordingly.

Case:25 Messrs United Feeds (Pvt.) Ltd

2018 C L D 1454

[Punjab Environmental Tribunal]

Before Shazib Saeed, Chairperson and Muzaffar Mahmood, Member (General)

Messrs UNITED FEEDS (PVT.) LTD.---Appellant

Versus

PROVINCIAL ENVIRONMENTAL PROTECTION AGENCY (EPA) and others---Respondents

Appeal No. 18 of 2016, decided on 19th March, 2018.

JUDGMENT

United Feed Pvt. Limited has filed this appeal against EPO dated 08.04.2016 issued by the EPA. That EPO was based on complaint filed by respondent No. 3 to Muhammad Naeem Arif Principal of Muslim College, Billi Wala, Multan. It was alleged that the MEPA Rice Mills, now converted in poultry feed factory, is using animal intestines, creating havoc, bad smell amongst the 2000 students of the college and request was made to initiate action under environmental law against the unit. Upon receiving this complaint Zafar Rehman Inspector was deputed to visit the site and prepare SIR. He made inspection of the unit on 15.02.2016 and it was reported by him that there is violation of section 12 of the PEPA-1997. It was reported that Haji Muhammad Asghar established the factory under the name and style of MIPA Rice Mills. EPA Punjab took cognizance during construction phase for not taking environmental approval and issued EPO on 09.04.2014 with following direction.

"Stop any further constructions of the unit and take necessary measures to regularize the violation of section 12 of the ACT ibid from the competent forum within 30 days."

2. EPO was received by the proponent of MIPA, Rice Mills on 18.09.2014 Non-compliance Report of the EPO was reported on 29.11.2014. It was further reported that Rice Mill converted into manufacturing unit of feed of chicks under the name and style of Messrs United Feeds (Pvt.) Ltd. and that too had not obtained

environmental approval from the EPA. Report was forwarded for issuance for EPO to stop operational activities of the unit. It was due to severe pollution caused by huge quantum of stream causing odour nausea/vomiting within distance of 1-2 km generated during poultry feed manufacturing process to save environment and health of the community/students of Muslim College.

3. Report further clarified that the area is declared as negative area by the District Government Multan for establishment of Industrial Unit. The unit was reported in manufacturing the poultry feed by using Maize, Rice, Soya Beans and Sun Flower Beans with addition of certain minerals. Seeds were crushed in powdered form and cooked with the supply of steam from boiler. During this process to give the material the shape of grains, steam absorbs the smell of the gained material and such polluted steam is released in the atmosphere from of pipe of 12" dia and that huge volume of smell in the form of obnoxious steam is released into the ambit air making it polluted and degrading its quality to the extent of unfit for breathing for 2000 students and college management, directly suffering from tile polluted air. It was recommended that since the management of the factory had not made any arrangement to control the smell produced during the process therefore the present site not feasible for living point of view as it is causing unrest and discomfort to the surrounding community, posing serious threat to the life and health.

4. On the basis of that report EPO was issued on 8.4.2016 for following violations;-

"i. You have not obtained Environmental Approval from EPA Punjab for the establishment of your Feed Mills, you have failed to comply with provisions of section 12. Hence violation of section 12 has been committed.

ii. The area in which United Feed Mills has been made operational is negative area for establishment of industrial unit declared by City District Government, Multan i.e. industrial unit cannot be established in this area, (Notification No. DO(E&IP) / MN/ NEG.Area / 05 / 1020 dated 08.06.2011.

iii. A huge volume for smell/odour in the form of obnoxious steam is being released into ambient air which makes the ambient air polluted and degrading its quality to the extent of unfit for breathing within circumference of 1-2 Km around the unit depending upon the wind speed and direction. This polluted air is potential source of vomiting/nausea in the citizens living thereby, in the surrounding communities and passing from the Multan-Bahawalpur Road.

iv. The Muslim College Science and Commerce is located on the other side of the Bahawalpur Road opposite to the factory. The college has the students of more than 2000 and the students and college management are directly suffering from the smell/odour of the factory.

v. You have not made adequate arrangements to control the smell/odour produced during the process."

This EPO is impugned in this appeal. Non compliance of EPO was reported 20.04.2016 and instant appeal was filed on 04.05.2016. It was admitted for regular hearing on 26.04.2016.

5. During pendency of this appeal 2nd appeal No. 26/2016 was filed challenging order dated 06.06.2016 through which the unit of the appellant was sealed. On 20.6.2016, as an interim relief, unit was de-sealed subject to taking corrective measures. On 20.07.2017 2nd appeal was withdrawn on the statement of counsel for the appellant that EPA has withdrawn the order dated 06.06.2016 and grievance of the appellant had been redressed.

6. Learned counsel for the appellant submits that the unit is manufacturing poultry feed which is not included in the schedule 1 and 2 of IEE/EIA Regulations 2000 hence obtaining of environmental approval is not mandatory therefore violation of section 12 is not applicable. Further submits that corrective measures have been adopted and the compliance of the EPO has been made by the proponent by installing a pipe which dispersed the stream up-to the height of 50 feet. Submits that there are no standard of smell notified by the EPA to determine any violation. Argued that there is only one college on the Bahawalpur Road and there are number of industrial units situated there since its development and all the industries on the Bahawalpur Road cannot be removed for this college. Lastly argued that unit maintains best hygiene practices by use of best quality of ingredient like Maize, Rice, Soya bean, Canola Beans and vegetable oil etc. and prays for the acceptance of the appeal.

7. On the other hand learned Law Officer and learned counsel for the respondent No. 3 argued that the grievance of the appellant has been redressed as agency has withdrawn the order 6.6.2016 and no cause of action is left with the appellant to pursue this appeal. Submits that connected appeal was also withdrawn by the appellant on this ground. Argued that unit is causing adverse environmental damage in the area as reflected in the SIR. Firstly the unit was established as Rice Mill in a Negative Area without obtaining environmental approval from the agency. When agency took cognizance and issued an EPO, Rice Mill was converted into United Feed of manufacturing chicken feed and that too without obtaining environmental approval. Submits that Appellant himself admitted in memo of appeal, in ground V, that unit uses best quality ingredients like Maze. Soyabean Meal. Rice, Canola Meal, vegetable Oil etc therefore for storage of these ingredients/agricultural products the environmental approval was necessary from the EPA.

8 Term environment, as per the Act, includes:

(a) air, water and land;

(b) all layers of the atmosphere;

(c) all organic and inorganic matters and living organisms;

(d) the ecosystem and ecological relationships;

(e) buildings, structures, roads, facilities and works;

(f) all social and economic conditions affecting community life; and

(g) Inter-relationships between any of the factors in sub-clauses (a) to (f)

9. PEPA prohibits discharge of any effluent or waste or air pollutant or noise in an amount: concentration or level which is in excess of the Environmental Quality Standards. One of its environmental examination, which needs to be done before a project is undertaken in order to assess the risks the project may pose to the environment.

In an Indian Case, Bandhua Mukti Morcha v. Union of India and others 1984 SCR (2) 67 Justice Bhagwati noted to this effect that:

"Strict adherence to the adversarial procedure can sometimes lead to injustice.... it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring necessary material before the Court for the purpose of securing enforcement of their Fundamental Rights."

10. The landmark public interest environmental litigation is considered to be Shehla Zia v. WAPDA PLD 1994 SC 693. This case is important for quite a few reasons.

Firstly, the honorable Supreme Court broadened the right to life (Article 9) to include the right to clean environment and made the following observation:

"The word "life" has not been defined in the Constitution but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. A person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations."

Secondly, the honorable Court observed that a balance needs to be struck between the rights of the citizens and the economic progress and prosperity of the country. Thus, the Court highlighted that a "policy of sustainable development" shall be adopted.

Thirdly, the Court gave weight-age to expert opinion and the importance of research in technical matters.

Lastly, the Supreme Court introduced the precautionary principle in the Pakistani jurisprudence. This was adopted from the Rio Declaration albeit it is not binding. The said Principle 15 of Rio Declaration provides:

"...Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation."

11. In recent case of Ali Steel Industry v. Government of KPK 2016 CLD 569 reiterated the constitutional nature of the environment rights:

'Right to environment that is not harmful to the health or well being of the people and an environment that protects the present and future generations is an essential part of political and social justice and even more integrated to the right to life and dignity under our constitution'

12. The court reaffirmed the importance of environmental justice and need to use precautionary and preventive measures to ensure the protection of rights under Articles 9 and 14 of the Constitution of Pakistan. Even though the KPK Environmental Protection Act 2014 did not extend to PATA the court held that no illegality was found with respect to the sealing of the premises or the direction of stoppage to the petitioner. The court stressed on the duty to combat environmental degradation.

13. In terms of section 12 of the Act no project shall commence the construction or operation unless it has obtained permissions of the EPA after having filed either an IEE or EIA. The regulations provide for the instances when an IEE is to be filed, however section 12 clearly mandates that if a project has adverse effect on the environment an EIA must be filed. In this case the contention of the appellant is that he is not required to file IEE or EIA as his project does not find mention in Schedule 1 of the Review of IEE and EIA Regulations 2000. The contention of the appellant is not correct. The project does fall in the schedule 1 as the project involve repacking, formulation or ware house of agricultural products. Firstly the unit was established as Rice Mill without obtaining environmental approval from the agency. When agency took cognizance and issued an EPO, Rice Mill was converted into United Feed of manufacturing chicken feed and that too without obtaining environmental approval. Appellant himself admitted in memo of appeal in ground V that unit uses best quality ingredients like Maze, Soyabean Meal, Rice, Canola Meal, vegetable Oil etc. This involves storage. repacking and formulation of agricultural products therefore environmental approval was necessary from the EPA.

14. According to SIR area is declared as negative area by the District Government Multan for establishment of Industrial Unit. The unit is involved in manufacturing the poultry feed by using agricultural products creating adverse environmental effect. EPA must look at

the impact of the project has on the environment. This is mandatory and cannot be avoided.

15. In 2015 CLD 983 Ms. Imrana Tiwana Case Hon'ble Lahore High Court observed that EIA is nature's first man made check post, nothing adverse to the environment is allowed to pass through. It is for this reason that environmental assessment is an onerous function. It was further held that it is through the tool of EIA that EPA gets to regulate and protect the environment and as a result the life, health, dignity and well being of the people who inhabit the environment. Environmental assessment is therefore a substantive exercise as every step in this process cautiously guards the fundamental rights of the people. It was held that review of EIA in not inter parties or an adversarial exercise but are inquisitorial proceedings carried out under the public gaze and open to public scrutiny. The review process is incomplete without effective public participation and technical advice of the expert.

17(sic.) This Google Satellite Map view of the site depicts real picture. How there can be a balancing interest between right to development and the right to life of the current as well as future generation. Anyone can see the difference across the road in this map.

18. Appellant did not obtain any approval from the Environmental Protection Agency on two occasions. He started Rice Mill without approval and Agency took cognizance and issued an EPO. Then appellant started the current business and that too without environmental approval. Unit of the appellant has to go through the nature's first man-made check post of IEE and EIA. This is mandatory and cannot be avoided especially when in the SIR there are allegations of damage to the environment. This tribunal finds no illegality in the act of the agency taking cognizance and issuing impugned EPO. This appeal has no merits and is dismissed.

HBT/4/PET Appeal dismissed.

Case No: 26 Muhammad Shahid

2018 C L D 506

[Lahore]

Before Ayesha A. Malik, J

MUHAMMAD SHAHID---Petitioner

Versus

PUNJAB ENVIRONMENTAL TRIBUNAL, LAHORE and others---Respondents

Writ Petition No.74381 of 2017, heard on 18th January, 2018.

Date of hearing: 18th January, 2018.

JUDGMENT

AYESHA A. MALIK, J.--Through this Petition, the Petitioner has impugned order dated 21.7.2017 issued by Respondent No.1, Punjab Environmental Tribunal, Lahore.

2. The facts of the case are that the Petitioner was constructing a control poultry shed under the name of Chaudhary Protein Farm Control Shed at Chak No.8/11-L, Tehsil Chichawatni, District Sahiwal. A notice was issued to the Petitioner under section 21(3)(b) of the Punjab Environmental Protection Act, 1997 ("Act") on 1.3.2017 stating therein that construction of the poultry farm is illegal and in contravention to the provisions of the Act. The Petitioner responded to the show cause notice on 20.4.2017 denying all allegations. In the meanwhile, Respondent No.3, Assistant Director Environment, Sahiwal carried out a site inspection of the poultry farm and issued its report on 24.1.2017 in terms of which it was stated that the land on which the shed is being constructed is agriculture land on which commercial/industrial activity is being undertaken without any permission or conversion of the status of the land. It was also stated in the report that within 100 meters is a residential colony which is in violation of the requirements of the law which prescribes a minimum of 500 meter distance.

3. With respect to the environment approval, it was stated in the report that no environment approval has been sought, hence it was recommended that action be taken against the Petitioner. Notices were issued to the Petitioner by the Environmental Protection Agency ("EPA"), however the Petitioner did not respond. Another complaint was filed by Respondent No.4 before the Environmental Tribunal on 23.5.2017. The Environmental Tribunal took notice of the matter and ultimately issued the impugned order dated 21.7.2017. In terms of the impugned order, the EPA was restrained from granting any approval to the Petitioner with respect to the poultry farm until the matters in issue raised in the complaint were

decided. One of the disputes pending before the Environmental Tribunal is with respect to the value of the unit as the Petitioner alleged that he was not required to take any environment approval since his unit fell under Regulation 3 read with Schedule 1 of the Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000 ("Regulations"). Subsequent thereof the EPA in compliance with the order issued by the Environmental Tribunal on 19.7.2017 again carried out another site inspection to determine the construction cost of the unit. As per the report 90% of the work is completed and the unit has been converted from a control shed to a semi control shed to reduce cost. Consequently the estimated cost has been reduced from Rs.120,000,000/- to Rs.5,000,000/-. It was also stated in the report that measures should be adopted to prevent adverse effects on the environment which are likely to be caused by the operation of the poultry shed and that there should be some plantation as well to improve the environment of the area.

4. Learned counsel for the Petitioner argued that the Environmental Tribunal has no jurisdiction in the matter as it cannot hear the complaint directly when the matter is pending before the EPA. He also argued that no environmental approval was required as the cost of the project was less than rupees one million which is the basic cost for the purposes of an Initial Environmental Examination ("IEE"). So far as the Environmental Impact Assessment ("EIA") as per section 12 of the Act, it is also not required as the project does not fall under Schedule II of the Regulations. Therefore it was argued that the impugned order is without jurisdiction and illegal.

5. Report and parawise comments have been filed by Respondents Nos.2 and 3 and Respondent No.4. In terms of the arguments made by the Counsel, the Environmental Tribunal acted under the law and passed a restraining order on 21.7.2017 directing Respondent No.2 to refrain from issuing an environmental approval until the next date of hearing along with a direction to the Petitioner for not making his project functional. It was also argued that in terms of the Punjab Poultry Product Act, 2016 ("Poultry Act"), a poultry farm must be at least 500 meter away from nearby human settlement and that the Petitioner's poultry farm was in breach of this requirement. The Counsel argued that the Petitioner's farm is located in an agricultural area without any permission to do commercial/industrial activity and the same would cause an adverse impact on the environment. Further that the poultry farm is being constructed in violation of the Poultry Act.

6. The basic issue in the instant Petition is with respect to the jurisdiction of the Environmental Tribunal and the requirement of IEE and EIA as stipulated in section 12 of the Act read with the Regulations. For ease of reference section 12 of the Act read with Regulations 3 and 4 of the Regulations are reproduced below:

12. Initial environmental examination and environmental impact assessment.---(1) No proponent of a project shall commence construction or operation unless he has filed with the Provincial

Agency an initial environmental examination or where the project is likely to cause an adverse environmental effect, an environmental impact assessment, and has obtained from the Provincial Agency approval in respect thereof.

(2) The Government Agency shall:

(a) review the initial environmental examination and accord its approval, or require submission of an environmental impact assessment by the proponent; or

(b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, or require that the environmental impact assessment be re-submitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to

(i) trade, manufacturing or business activities, processes or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reasons to be recorded in writing, the Director General of the Provincial Agency is of the opinion that the request for confidentiality is not well-founded or the public interest in the disclosure outweighs the possible prejudice to the competitive position of the project or its proponent; or

(ii) international relations, national security or maintenance of law and order, except with the consent of the Government; or

(iii) matters covered by legal professional privilege.

(4) The Provincial Agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules and regulations made thereunder.

(5) Subject to subsection (4) the Government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.

(6) The provisions of subsections (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed.

(7) The Provincial Agency shall maintain separate registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such registers shall be subject to the restrictions specified in subsection (3).

Regulations 3 and 4

3. A proponent of a project falling in any category specified in Schedule I shall file an IEE with the Federal Agency and the provisions of section 12 shall apply to such project.

4. A proponent of a project falling in any category specified in Schedule II shall file an EIA with the Federal Agency and the provisions of section 12 shall apply to such project.

In terms of section 12 of the Act, no project shall commence construction or operation unless it has obtained permission from the Provincial Agency after having filed either an IEE or EIA. The Regulations provide for the instances when an IEE is to be filed, however, section 12 clearly mandates that if a project has an adverse impact on the environment an EIA must be filed. Adverse effect on the environment has been defined in section 2(i) of the Act as follows:-

Impairment of, or damage to, the environment and includes:

(a) impairment of, or damage to, human health and safety or to biodiversity or property;

(b) pollution; and

(c) any adverse environment effect as may be specified in the regulations.

In this case, the contention of the Petitioner is that he is not required to file any IEE or EIA as his project falls below rupees one million, as given in Schedule 1 of the Regulations. Schedule I provides that poultry, livestock, stud and fish farms with a total cost of more than rupees one million requires an IEE. However, irrespective of the requirement given in the Regulations Section 12 clearly mandates that an EIA is to be filed if there is an adverse impact on the environment. The question therefore is whether the poultry farm will have an adverse impact on the environment. In terms of the complaint filed by Respondent No.4, there are two major grievances which show that there is an adverse impact on the environment. The first is that the surrounding area is an agricultural area and the Petitioner has commenced construction of his project without any permission from the competent authority. The second grievance is that the poultry farm is 100 meter from a human settlement and will have an adverse impact on the

environment and compromise the health and living conditions of the residents of the area. There is merit in both grounds however, the EPA did not consider any of the aspects of running a controlled or semi controlled poultry shed which will impact the environment. In terms of the information provided by the Respondents, poultry farms are a source of odor and smell as well as flies, rodent and other pests. These can give rise to diseases such as cholera, typhoid, malaria and dengue. Furthermore improper disposal of waste water can pollute the water and soil. The proponent of a project must provide a detailed dead bird management plan which should not adversely impact the environment. Unfortunately both the site reports relied upon failed to consider these aspects which are essential for the establishment of a poultry farm. The close proximity of the poultry farm from human settlement is a cause of great concern. Poultry facilities are undoubtedly a source of odor and smell which adversely affects the life and health of the people living in the vicinity. Flies, rodents and other pests are an additional menace to the local area, its health and well being. Their presence is mainly related to the manner in which the feed is managed and stored for which proper areas must be made and control mechanisms put in place to avoid flies and other pests. Furthermore water pollution and use of pesticides will damage the surface water and ground water and give rise to water borne diseases. Other serious impacts on the environment are the disposal of waste water and dead birds. Both issues call for proper measures to be adopted to ensure minimum impact on the environment. Under the circumstances the EPA must in the first instance look at the impact a project has on the environment, before it considers the cost of the project. In such cases section 12 of the Act is clear that the object of the assessment reports is to ascertain whether there is an adverse impact on the environment. This being mandatory in nature cannot be avoided.

7. In the case cited at Ms. Imrana Tiwana and others v. Province of Punjab and others (2015 CLD 983), a Full Bench of this Court held:

EIA is nature's first man-made check post, nothing adverse to the environment is allowed to pass through. It is for this reason, that environmental assessment is an onerous function. It is through the tool of EIA that EPA gets to regulate and protect the environment and as a result the life, health, dignity and well being of the people who inhabit the environment. Environmental Assessment is, therefore, a substantive exercise as every step in this process cautiously guards the fundamental rights of the people. Review of EIA is not inter parties or an adversarial , exercise but are inquisitorial proceeding carried out under the public gaze and open to public scrutiny. The review process is incomplete without effective public participation and technical advice of the experts.

In this case the Petitioner commenced construction of his project without an approval from the EPA. The EPA made two site visits but failed to consider the nature of the project and its impact on the environment and instead recommended in a cursory manner, that

measures be adopted to prevent an adverse impact on the environment. This direction was given without any mention of the probable causes of the impact on the environment. In this regard a bare review of the Poultry Act reveals that the establishment of a poultry farm has a direct bearing on the environment and therefore will impact the environment. Sections 12, 13, 14 and 15 set out the requirements for establishment of a poultry farm and call for bio-security measures, poultry waste management and reporting in case of poultry disease. All these requirements are directly related to the well being of the local inhabitants and the environment. These requirements directly impact the environment, hence the Petitioner was required to file an EIA prior to the construction of his project.

8. Furthermore, in this case the distance of the Petitioner's poultry farm is 100 meters from a human settlement which is in contravention to the requirement of section 12 of the Poultry Act which clearly stipulates that the poultry farm must be 500 meters from human settlements. This ground in itself was sufficient to restrain the construction of the poultry farm of the Petitioner as it is in contravention to the law. In such a situation, there are no remedial measures which can be adopted as the poultry farm is in close proximity to human settlement putting the health of the residents to risk and polluting the environment.

9. The other ground urged by the counsel for the Petitioner is with respect to the jurisdiction of the Environmental Tribunal on proceeding with the complaint of Respondent No.4. Section 21 of the Act provides for the jurisdiction and powers of the Environmental Tribunal. As per section 21 an Environmental Tribunal can take cognizance of any offence under section 17(1) on a complaint filed by the Provincial Agency or an aggrieved person, who has given notice of not less than 30 days to the Provincial Agency of the alleged contravention and his intention to complain before the Environmental Tribunal. Section 17(1) provides for the penalties imposed if a person contravenes any provisions of sections 11, 12, 13 or 16 or any other order issued thereunder. In this case the contravention alleged is of section 12 and the requirement of filing an IEE or EIA. In fact the Petitioner did not obtain any approvals from the Environmental Protection Agency or the relevant authority, to carry out commercial/industrial activity in an agriculture area. Respondent No.4 issued notice to the Director General, Punjab Environmental Protection Agency, Lahore clearly informing him that he will be filing a complaint before the Environmental Tribunal for redressal of his grievance. The complaint was then filed on 23.5.2017. Therefore as per section 21 of the Act, the Environmental Tribunal has jurisdiction to hear a complaint of an aggrieved person who has issued notice, as required, to the EPA.

10. Under the circumstances no case for interference is made out. Petition is **dismissed.**

MWA/M-31/L Petition dismissed.

Case: 27 Messrs Amjad Ali Brick-Kiln

2018 C L D 139

[Lahore]

Before Ayesha A. Malik and Jawad Hassan, JJ

Messrs AMJAD ALI BRICK-KILN---Appellant

Versus

DIRECTOR-GENERAL E.P.A. and another---Respondents

Environmental Appeal No. 128 of 2009, decided on 20th March, 2017.

JUDGMENT

C.M. No.02/2016

JAWAD HASSAN, J.---Through the instant application the Applicant seeks restoration of C.M. No.1/2014 filed for restoration of the main appeal which was dismissed due to non-prosecution vide order dated 12.09.2013 which is supported by an affidavit. The instant application is allowed for the reasons mentioned therein and the C.M. No.1/2014 is restored and allowed; resultantly the main appeal is restored to its original number and is fixed for today.

Main Case

JAWAD HASSAN, J.---Through this Environment Appeal, the Appellant has called in question the judgment dated 16.07.2008 passed by the Respondent No.2/the Environmental Tribunal, Punjab, Lahore (tile "Impugned Judgment"), whereby the Appellant was imposed fine of Rs.5,000/- and was directed to adopt the certain technical measures to reduce/control the emissions.

2. Brief facts for the disposal of instant appeal are that in October 2002 a complaint was lodged against the Appellant to the Additional Secretary Environment, Punjab alleging therein that the unit (Brick kiln) of the Appellant, which was situated near Chenab College, Chiniot, is making constant cause of damaging the environment by emitting smoke, which results into severe Air pollution. A Report dated 30.12.2002 was submitted and in pursuance of which Environmental Protection Order (the "EPO") dated 08.09.2004 was issued to the Appellant, while exercising powers under section 16(1) of the Pakistan Environment Protection Act of 1997 (the "Act"). After the stipulated period when the Environmental Protection Agency (the "Agency") found that abatement measures have not been adopted despite of its issuing another EPO under section 16(2) to adopt certain measures within sixty (60) days, it filed Complaint

under section 21(3) of the Act before the Respondent No.2 which was allowed and the Appellant was imposed fine of Rs.5,000/- and a direction was given to adopt technical measures written in the said order in future to reduce the emissions. Hence, the instant appeal.

3. Learned counsel for the Appellant submitted that neither from the College Authorities nor any aggrieved person from the vicinity made the complaint rather the same has been made by an Association, as such was filed by the person which was not aggrieved; that the impugned judgment is illegal as the contents of the complaint were never proved; that the impugned judgment is not sustainable in the eye of law as the same has to be passed after the decision of Appellant's pending application under section 265-K, Cr.P.C.; that all the proceedings are liable to be abated because the requirement of section 16(1) of the Act has not been fulfilled and the Appellant has not been afforded any opportunity of personal hearing; that the Respondent No.2 has failed to appreciate the fact that as per requirements the necessary measures had already been adopted by the Appellant; that the Respondent No.2 has ignored the fact that there is glaring contradiction between the evidence of the PWs. In support of his contentions learned counsel has placed reliance on the case titled Messrs Aziz Flour Mills and 2 others v. The Industrial Development Bank of Pakistan (1990 CLC 1473) and The State Asif Adil and others (1997 SCMR 209).

4. On the other hand learned Law Officer appeared on behalf of the Respondents vehemently controverted the arguments advanced by the learned counsel for the Appellant and prayed for dismissal of the instant appeal on the grounds that there is no illegality or perversity in the impugned judgment which has rightly been passed by the Respondent No.2; that the EPO was issued after affording personal hearing to the Appellant and being dissatisfying from the defence of the Appellant; that after the passing of sixty days of the EPO when the Appellant was found running brick kiln without adopting abatement measures, the Agency filed the complaint before the Respondent No.2 to implement its EPO in accordance with law and as such, the Appellant has rightly been punished vide the impugned judgment.

5. We have heard the arguments of both the sides and perused the record minutely.

6. From the perusal of record it transpired that the Appellant's unit (Brick kiln) was found constant cause of damaging the environment by emitting smoke, which results into severe air pollution. The EPO dated 08.09.2004 was rightly passed, while exercising powers under section 16 of the Act. After the stipulated period i.e. sixty days, when the Agency found that abatement measures have not been adopted, it filed appeal before the Respondent No.2 which was allowed and the Appellant was directed to pay fine of Rs.5,000/- and adopt technical measures written in the said order in future to reduce the emissions.

7. The record reveals that initially on receiving the compliant, the Appellant was served with the notice dated 20.02.2003 for personal hearing under section 16(1) of the Act and a Site Monitoring Report of five brick Kilns including the unit of the Appellant was submitted on 25.06.2004. Thereafter final notice for personal hearing was issued to the Appellant as well as others on 23.07.2004 and in pursuance of which in presence of the Appellant and others proceedings were conducted in which the owners of the brick kiln, including the Appellant pacifically admitted that the brick kilns are causing air pollution but they do not have any alternate technology to control this pollution. In the said proceedings the Appellant and others were advised to adopt such measures and technology to reduce the air pollution within the NEQS level. Subsequently, the EPO dated 08.09.2004 was issued under section 16 of the Act with the observation that "bring emissions of brick kiln for PM, CO and SO2 in conformity with NEQS by adopting engineering solution to save the public as well as the environment to the satisfaction of this Agency within 60 days." It was further stated in the said order that in case of failure to comply with this EPO the Appellant will be proceeded against under section 17 of the Act. After expiry of said sixty days the team of Agency revisited the site on 08.11.2004 and found that the unit was found without abatement measures to control air pollution and resulted into filing complaint before the Respondent No.2 on 16.03.2005 under section 21(3) of the Act by the Agency seeking proceedings under section 17 of the Act against the Appellant.

8. It is to be noted that the Respondent No.2 during trial of the pending Complaint got recorded statement of two witnesses namely Zafar Iqbal, D.O. Environment, Multan and Muhammad Farooq Alam, Research Officer, Air Pollution of the Agency. However, the cross-examination over the said witnesses was also made and then it passed the impugned judgment. It has been observed in the impugned judgment that the evidence of the witnesses who are officials is coherent and correlated and even during cross-examination nothing has been thrashed out. The impugned judgment has been passed by the Respondent No.2 on the basis of material made available. The EPO evidence of the witnesses as well as the reports are sufficient evidence to prove that the Appellant is involved in a business, which offends provisions of the Act causing air pollution exceeding the NEQS, thus violating section 11 of the Act. Section 11 of the Act clearly states that no person shall emit or allow the emission of any air pollutant, the level of which is excess of NFQS. Under section 2(iii) of the Act the word air pollution means "air pollutant" means any substance that causes pollution of air and includes soot, smoke, dust particles, odour, light, electro-magnetic, radiation, heat, fumes, combustion exhaust, exhaust gases, noxious, gases, hazardous substances and radioactive substances.". As the Agency has to enforce NEQS of the air emission and as per the Site Monitoring Report of the Agency, it clearly stated as under:

"The above said Brick kilns are still in serious violation of NEQS regarding PM, CO and SO2 emission during operation. The high emission levels of SO2, CO and PM are posing adverse health effects on the students in College and the residents around the brick kilns and the environment of the area."

Thus the Appellant has violated section 11 of the Act and rightly been dealt with by the Tribunal.

9. The Division Bench of This Court has dismissed the similar environmental appeal in the case of Attique Rehman v. Environmental Tribunal (2009 CLD 1048) by holding that the notices were issued under section 16(1) of the Act and impugned action against the appellant was taken within the parameters of law. The order, therefore, is devoid of any illegality or infirmity to call for interference in this appeal. Learned counsel for the appellants has wrongly contended that the Tribunal has affirmed the order/direction of EPA, regarding shifting of unit from existing place to some other place. The impugned order passed by the Tribunal is clear. It has been held by learned Tribunal that shifting of the unit from it's existing place to another site, is not a lawful order and such order is in conflict with the provisions of PEPA, Act and it preamble. Learned Tribunal, therefore, set aside the order, whereby the appellant was directed to shift its project. Environmental Protection Order was passed on 4-8- 1999, while the appellant is delaying the matter, by fighting on mere technicalities for the past ten years. The unit has been established in a residential area and permitting to function such industrial project (obnoxiously) for a considerable long time by offending the provisions of the Act, will not save the purpose of law and justice. This illegal activity has to come to an end. It should not be allowed to be carried on, under the shelter of frivolous and technical objections.

10. Furthermore, in Packages Limited v. DG, EPA (2008 CLD 1160) the Division Bench of this Court has dismissed the environmental appeal by holding as under:

"we find that after receiving the reports as to the said environmental pollution, the appellant was served with a notice and thereafter a personal hearing was conducted by the Provincial Environmental Protection Agency. The learned counsel has appended a letter, wherein the measures being taken were stated. These were covering of the drain, raising the height of the chimney and then the details of the plan to shift the unit was reported. After hearing the appellant, the Environmental Protection Agency passed an EPO on 24-1-2007 and the appellant was given a three months' notice to take appropriate measures to treat the waste water of unit to keep it within NEQS limits, failing which it was to be proceeded against under section 17 of the Pakistan Environmental Protection Act, 1997. It was against this order that the appellant filed an appeal under section 22 of the said Act which has been dismissed vide the impugned judgment. Having examined the records, we find that the appellant had never seriously questioned the fact that effluents are

polluted. On the other hand, the case of the appellant had been that it had intended to take measures fur reduction of the pollution and even it was suggested that the unit is being wound up. But it is obvious that the needful has not been done. This being so, we do not find any grounds being made out to interfere either with the impugned judgment of the said Tribunal or the said EPO. The E.A. is dismissed in limine."

11. Furthermore, the impugned judgment was passed on 16.07.2008 whereas the instant appeal was filed on 03.03.2009; meaning thereby that the same has been filed after a period of more than seven months. Section 23 of the Act provides time for filing appeal against the final order of the Environmental Tribunal as thirty days. For the sake of brevity the said Section is reproduced below and is as follows:

"**23. Appeals from orders of the Environmental Tribunal**.---(1) Any person aggrieved by any final order or by any sentence of the Environmental Tribunal passed under this Act may, within thirty days of communication of such order or sentence, prefer an appeal to the High Court."

From the bare reading of the above Section it is crystal clear that the instant appeal was to be filed within thirty days after the impugned judgment but the Appellant preferred the same after more than seven months which is badly hit by limitation. Moreover, no application for condonation of delay has been filed by the Appellant along with the instant appeal showing sufficient cause for delay in filing the appeal or circumstances beyond his control.

12. We fully agree with the findings of the Respondent No.2 and see no illegality or perversity in the impugned judgment which has been passed in accordance with law and do not warrant any interference by this Division Bench.

13. In view of what has been discussed above, the instant Environmental Appeal being devoid of any force is hereby dismissed.

ZC/A-47/L Appeal dismissed.

Case No: 28 Shahab Usto---Petitioner

2017 S C M R 732

[Supreme Court of Pakistan]

Present: Amir Hani Muslim, Qazi Faez Isa and Faisal Arab, JJ

SHAHAB USTO---Petitioner

Versus

GOVERNMENT OF SINDH through Chief Secretary and others---Respondents

Constitution Petition No. 38 of 2016, decided on 16th March, 2017.

Date of hearing: 16th March, 2017.

JUDGMENT

AMIR HANI MUSLIM, J.---This Petition is filed by a practicing lawyer praying for the following reliefs:-

"i. Take a serious notice of this issue of public importance involving the denial of fundamental right of the people of Shikarpur and other parts of Sindh to have a clean drinking water, sanitation and a safe environment, which indeed are also the issues of national importance;

ii. Declare that the Respondents have violated the citizens' fundamental right to have clean water, which is subsumed in the rights to life, liberty, property, human dignity, information and equal protection of the law, as guaranteed under the Constitution of Pakistan;

iii. Declare that the Respondents have violated the Doctrine of Public Trust which bind them to act as the fiduciaries of the people and commit them to providing the people of Shikarpur and other parts of Sindh with a clean drinking water, public sanitation and a hygienic environment so that they may lead a healthy, productive and dignified life as is pledged to them under Articles 4, 9, 14, 18, 24 and 25 of the Constitution of Pakistan;

iv. Direct the Respondents to implement Sindh Environmental Protection Act, 2014, and other relevant rules, statues and Constitutional provisions in order to protect, conserve, rehabilitate and improve the environment which includes clean water, for the prevention and control of pollution, and promotion of sustainable development;

v. Direct the Respondents to refrain from further such violations of the Doctrine of Public Trust and Fundamental Rights of the people, as guaranteed under the Constitution;

vi. Direct the Respondents to ensure prevention of further contamination of underground water/public water supply in Shikarpur and other cities of the province by immediately taking necessary measures, which include discharge of effluent/sewage into environmentally safe outlets, remove underground septic tanks and other sources of the contamination of aquifer, ensure efficient sewage and solid-waste disposal systems, and treat effluent before draining it into irrigation conduits;

vii. Direct the Respondents to immediately appropriate all available funds towards the provision of clean water, sanitation, disposal of solid-waste material and treatment of effluent in Shikarpur and other parts of the province;

viii. Direct the Respondents to immediately begin a systematic repair of all the broken sewage and sanitation systems, treatment plants, reverse osmosis plants, pumping stations and discharge-outlets in Shikarpur and other parts of the province;

ix. Direct the Sindh Environmental Protection Agency to perform its assigned statutory duties without fail including regular monitoring, water-testing, environmental assessment and publication of annual reports on its Website;

x. Direct the Sindh Environmental Protection Agency to submit a copy of its Annual Report to Registrar of this Hon'ble Court at least for a period of five years so that this Hon'ble Court may take appropriate action in case a lapse, violation or default is committed by the SEPA or the Respondent Authorities; and so that citizens may be able to knock on the door of this Hon'ble Court against the Respondents;

xi. Institute a three-member Commission headed by an Hon'ble sitting or retired Judge of High Court to conduct in-depth probe into the Respondent Authorities' failures to provide the people of Shikarpur and other parts of the province with a clean drinking water, sanitation and healthy environment, and to fix responsibilities on the errant/culpable persons/authorities; the commission may also recommend short-term and long-term measures to enhance efficiency, transparency and accountability in these vital public service utilities that are represented by Respondents Nos. 2, 3, 4, 5, 6 and 7;

xii. Retain jurisdiction over this action to monitor and enforce the Respondents' compliance with all associated orders of this apex Court;

xiii. Grant any other just or equitable relief(s) held appropriate as being fit and proper by this Hon'ble apex Court.

xiv. Cost."

2. On 21.12.2016, this Court had passed following order:-

The Petitioner is a practicing lawyer, permanent resident of District Shikarpur. He claims that the Sindh Government has created Respondent No. 2 somewhere in 2009-10, which was required to deliver sustainable water supply, sewerage and solid waste services in a safe, efficient and effective manner in 8 districts of upper Sindh namely Sukkur, New Sukkur, Rohri, Khairpur, Larkana, Shikarpur, Jacobabad and Ghotki. He further contends that this Organization i.e. Respondent No. 2 was created by obtaining loan of 500 million dollars from Asian Development Bank, which has not benefited the public at large of the said districts, instead the sub soil water was further contaminated. He submits that Government of Sindh has failed to provide drinking water to the public at large of the upper Sindh and lower Sindh instead the sub soil water, which the locals of these districts have to consume, is contaminated and not fit for human consumption. The issue raised is question of public importance, which has direct nexus with the fundamental rights of the residents of Sindh living not only in 8 districts but also who are living in the lower Sindh. According to the Petitioner, the issues involved inter alia relate to violation of fundamental rights of the people of Shikarpur and Sindh, violation of the doctrine of public trust, degradation of environment, conserving the underground water/aquifer, supplying clean water to the citizens, providing an efficient sanitation and solid waste material disposal management to the people of Shikarpur and other parts of Sindh, protection of public life and atmosphere from the irreversible effects of contamination of underground water and fixing responsibility on the lapse or failure of discharging statutory and constitutional duties and functions to provide citizens of their fundamental right to receive water and to live in a healthy environment.

2. Issue notices to the Respondents as well as to the Advocate General, Sindh, to file their detailed concise statements. The Managing Director of Respondent No. 2, the Secretary Local Government and the Chief Secretary, Sindh, shall be in attendance on the next date with their replies as the issues raised have direct bearing on the health of hundreds of thousands of citizens of Sindh. To come up on 27.12.2016."

3. The matter was fixed on 27.12.2016 when this Court after hearing the Advocate General, Sindh, and the high ups of the Government, directed for constitution of Commission for probing into the allegations made in the Petition. The substantial portion of the order dated 27.12.2016 is reproduced hereunder:-

"2. The Petitioner has prayed for constituting a Commission to probe into the allegations made in his Petition. The Chief Secretary alongwith the Advocate General Sindh has no reservation to this request. In these circumstances looking at the nature of controversy raised in these proceedings, we are satisfied that a Commission

needs to be appointed to probe into the allegations pleaded in the Petition and after proper enquiry report to this Court.

3. This Commission shall record its findings in regard to providing/supply of clean water to the residents of Sindh besides the deteriorating condition of sanitation in Sindh. The Commission shall also examine the statutory role played by the Sindh Environmental Protection Agency on the issues mandated by the Sindh Environmental Protection Act, 2014. The Commission shall examine the officials or material from relevant agencies/organizations inclusive of all the Civic and land owning agencies. The Federal Government, Sindh Government or any Organization, under their control, shall co-operate with the proposed Commission.

4. We, therefore, request the Chief Justice, High Court of Sindh, Karachi, to nominate a serving Judge, as Commission for the aforesaid purpose, in terms of the Order XXXII of the Supreme Court Rules, 1980. The Commission shall hold enquiry on the aforesaid issues and record its findings in detail in the proposed report within six weeks from the date of its notification. He shall hold the enquiry on day to day basis. As a Commission it shall exercise all the powers of a High Court Judge inclusive of the powers conferred under C.P.C.

5. The office shall send one set of the files to the Registrar, High Court of Sindh, with the order to be placed before the Hon'ble Chief Justice, High Court of Sindh. We expect that the Commission shall be notified within a week from today."

4. Pursuant to the request incorporated in the order dated 27.12.2016, Mr. Justice Muhammad Iqbal Kalhoro was appointed as Commission, who after holding inquiry and examining the material submitted a comprehensive report comprising of 129 pages to the exclusion of photographs and two volumes of supporting documents/annexures, which were taken on record on 06.03.2017. We have perused the report of the Commission, its conclusion and recommendations. The conclusion and the recommendations made in the report are reproduced hereunder:-

"**CONCLUSION**

1. From the perusal of above discussed facts, reports, statements, and from examination of the officials and people concerned, it has now been established that, we the people of Sindh, are not drinking clean water. The Indus River, its tributaries and channels, which are the source of drinkable water, have become polluted due to constant inflow of untreated municipal and industrial effluent right from Guddu Barrage to Kotri Barrage. Relevant departments/agencies or for that matter Sindh Government are cognizant of this water pollution, which is evident from various statements filed by them during the enquiry, but they are not taking any substantial steps to stop the water pollution by either treating the effluent through

Treatment Plants etc. before discharging it in watery bodies or by diverting the inflow of effluent to SCRAP drains etc.

2. We do have filtration plants installed in several cities of Sindh to provide us potable water after treatment, but due to inefficiency, lack of interest and corrupt practices of officials of agencies/departments operating these filter plants, they have been rendered almost redundant. The Clarifiers, Sedimentation Tanks, Chlorinators, Lagoons, etc. at the filter plants are out of order for the last many years. These filtrations plants are at the most being used as pumping stations for pumping water to their respective areas of delivery. Water purification that is to remove contaminants, suspended solids and gases from the water to make it consumable for humans is not taking place at any of the filter plants all over Sindh. The process of water testing, which is the integral part of water treatment as it ensures fitness of water to be potable is not being adopted either at any filter plants/R.O. Plants. The labs, which are available at some of the filter plants, are merely an eye-wash, as no test to determine physical, chemical and microbiological parameters is being conducted at any of such laboratories. Simply, without any sense of responsibility or any remorse, the raw water full of bacteria is being supplied to the people for drinking. It is therefore no wonder to see that due to use of contaminated water for drinking, many diseases like hepatitis, liver cancer, anemia, stunted growth among children, etc. are on rise in Sindh. The Treatment Plants in Karachi have been lying nonfunctional for a long time and one of them i.e. STIP-II has been encroached upon, yet no rehabilitation work by KW&SB has been undertaken to make them functional, and due to such apathy the untreated effluent is going into sea causing heavy damage to marine life.

3. During the enquiry all the departments concerned whose duty is to protect the sweet water of irrigation channels from fall of effluent were found sleeping over such state of affairs. In major cities like Karachi and Hyderabad water shortage has multiplied due to illegal water hydrants, water theft, and illegal connections and because of construction of the high-rise buildings without expanding civic infrastructure. However, Sindh Government does not seem to have a thought-out-plan, or a strong will or any interest to alter such moribund situation by making some changes in water policy i.e. to monitor strictly quality of water being supplied to the people and to protect watery bodies from constant inflow of effluent, and take stern action against those who do not follow it. The case of R.O. Plants in Sindh is sufficient to reflect with what strategy, approach and intention the Sindh Government is pursuing policy of provision of potable water in Sindh. It has paid billions of rupees to the contractor (Pak Oasis) in the last four/five years without even bothering to know quality and quantity of water being supplied by Pak Oasis against which all such payments have been made.

4. It cannot simply be assumed that the department concerned (Special Initiative Department, Sindh Coal Authority and KW&SB) are not aware of this state of affairs and/or the way this whole deceit

of providing drinkable water as per WHO standards from the R.O. Plants is being played. Rather the manner in which the payments by these departments have been made blindly in the past to Pak Oasis points out to their active connivance in the whole scheme.

5. Except in Karachi and Hydrated, the water supply schemes are built/developed by PHED, but after completion the whole infrastructure is handed over to local municipal administrations for operation and maintenance, which do not have structural capacity to do the same, resultantly the schemes fail to deliver, and the people are left with almost no water to drink.

6. Even the polluted water, being supplied to the people for drinking, is gradually getting scarce thanks to leakages in main transmission routes; water theft and lack of a system to monitor it; poor performance of outdated and inefficient pumping stations; water tanker mafia and illegal hydrants; mushroom growth of vertical buildings; old and rusted distribution system of water supply and inefficiency of officials of civic agencies and deliberate mismanagement in water distribution.

7. In many cities like Shikarpur and Larkana, the people are using underground water, the quality whereof has degraded due to lack of sanitation (caused, inter alia, by encroachment on sub-drains), use of pesticide in agriculture and constant inflow of effluent in irrigation canals. However, there is no initiative on the part of the Government to build filter plants in such areas to provide purified water and increase capacity of water supply.

8. The sanitation to keep us safe and healthy is notably absent because it seems to be the lost priority of Sindh Government. In some posh areas of the big cites, some semblance of sanitation is being maintained but that is done against heavy cost and taxes, the situation of sanitation, however, in rest of the localities of the big cites is as deplorable as it is in relatively small cities of Sindh, where sewerage, garbage, puddles and dirt seem to be permanent feature of the roads and streets. The sub-drains to take wastewater out of the city have been encroached, the gutters have been choked and some of the drains have been made dumping sites for disposal of solid waste. Despite spending huge amount, we have not been able to establish and run even a single modern drainage system having disposal of sewerage of the City through routes/channels culminating in Sim-Nalas, Treatment Plants, etc.

9. The present state of lifting of solid waste in Sindh is likewise lamentable; no adequate arrangement for lifting of solid is visible, the Cities have been turned into heaps of garbage. In Karachi, millions and millions of rupees have been spent by the DMCs in the name of garbagelifting but without any tangible result. There is no designated landfill site in any of the cities where the garbage could be disposed of. Presently, the garbage is dumped on drain nallas, irrigation canals or is being thrown on some makeshift places and left unattended or burnt openly.

10. **R.O. Plants:** The way these R.O. Plants are shown to be working and producing drinkable water as per WHO standards is nothing but a farce. Pak Oasis seems to be earning millions of rupees through these R.O. Plants, which do not produce good quality water for drinking. So far billions of rupees, as is shown in this document above, have been wasted in the name of these R.O. Plants without any justification for these Plants in some cases to even exist. Neither the quality of water through labs nor its quantity through any metering system is being analyzed at any of the R.O. Plants, yet the payments are being made by Sindh Government.

11. The whole scheme from feasibility to awarding contract and making payments on operation and maintenance of the R.O. Plants from the very inception needs to be investigated, so that the responsibility on the officials concerned making payments blindly could be fixed, and punishment awarded. The Annual Audit Report submitted by Director General Audit Sindh in respect of the R.O. Plants shows that the process of installation of the R.O. Plants has not been up-to the mark and in the said process a loss of millions of rupees to the Government has been caused on account of acceptance of bid on a rate higher than stipulated in PC-I; misprocurement; non-verification of water Filtration Plants and solar generation systems by Engineers, irregular expenditure without inviting open tender; installation of R.O. Plants not according to specifications and on very high rates; irregular appointment of Project Directors; non-conducting of Lab. tests of water. (The report of water samples taken from several R.O. Plants of district Tharparkar is available at page 100-102 of this document, which establishes unequivocally that the water being produced from the R.O. Plants does not meet the quality standards).

12. Unless a metering system to gauge the quantity of water and a Lab. to verify quality of water at each R.O Plant is introduced/installed, purpose of R.O. Plants to provide drinkable water would not be achieved nor would there be any justification to spend such huge amount on their O&M.

13. SEPA: Sindh Environmental Protection Act, 2014 deals comprehensively with environmental issues, and is best suited for the current circumstances. SEPA has been created as a regulatory and monitoring authority to enforce provisions of this Act and for this purpose SEPA has been vested with all the necessary powers, but SEPA'S performance so far is not enviable or commendable, it has yet to establish justification for its existence. The excuse cited by SEPA official that the authorities do not respond to their actions is simply untenable, and on the contrary reflects against it. The untreated industrial effluent is going into sea in Karachi, in Phulleli Wah in Hyderabad and in K.B. Feeder in Kotri, but the SEPA's initiative has not transcended beyond holding meetings with the management of industries and/or writing letters to them. SEPA has not played any role to check disposal of infectious hospital waste in municipal drainage system which ultimately goes into watery bodies. SEPA has also failed to ensure destruction of infectious hospitals

waste through incinerator as provided by the Hospital Waste Management Rules, 2014. It has not taken note of environmental degradation in coastal areas of Karachi precipitated by industrial effluent. Instead of becoming a result-producing organization, it has so far remained content with writing routine letters and issuing notices. SEPA has not been able to even realize the mandate given to it by the law. It has failed to even exploit the resources available to it in the shape of latest equipment and laboratory.

14. However, it is not irrelevant to state that at present, the organizational structure of SEPA appears to be weak and is mostly concentrated in Karachi. If we wish to have good results on environmental issues and strict compliance of 2014 Act, SEPA shall have to be strengthened, and expanded down to the district level.

15. NSUSC: Looking to the condition of the cities with NSUSC and keeping in view the amount it has shown to have spent on these cites (which is subject to verification of each scheme) it is not difficult to conclude that NSUSC has materially failed to deliver on basic targets it was mandated for. It has failed so far to take any adequate measure to either supply clean drinking water or make proper arrangement for disposal of solid waste and wastewater in the cities coming under its operation. Pools of sewerage water were seen in the streets of the cities under NSUSC control. NSUSC has not been able so far to establish anywhere the dumping and landfill sites for management of solid waste. Solid waste collected is disposed of by dumping onto open spaces by the side of roads or is thrown on makeshift dumping sites, which creates more hazards for the people. NSUSC has failed so far to cause sewage treatment in any city; the entire wastewater without any kind of treatment is very conveniently being disposed of in watery bodies i.e. River Indus and its tributaries. NSUSC claims to have spent huge sums of money to improve service delivery in respect of water supply and sanitation but its claim is not supported by any tangible result. NSUSC was also not able to establish that before execution of any such schemes, the relevant drawings, design and engineering, estimates etc. along with financial impact on approved cost prepared and supplied were duly scrutinized, checked and approved. NSUSC has failed to comply with environmental policy for which it was mandated. Since there is no improved system of service delivery in the cities with NSUSC, it is safe to say that NSUSC has not succeeded to ensure performance of the relevant persons (consultants, contractors, etc.) in delivering the services. NSUSC has provided the details of expenditure but it has failed to show that payments on operational charges were recommended after complying with all necessary formalities including site inspection to verify specification of work. Managing Director NSUSC was entrusted with Intermediate Payment Certificates for payments to the contractors, but NSUSC officials were not able to show that payments through Intermediate Payment Certificates were as per rules and any audit or verification of the executed work was done before making payments in this way to the consultant and contractors.

16. These facts coupled with the condition of cities under the operation of NSUSC (described below in this document) reveal that NSUSC has mismanaged finances entrusted to it. It has wasted public money for which it shall be held accountable. It has not been able to execute relevant projects yet, and has even failed to maintain the system of providing drinking water and sanitation which it inherited. NSUSC has been running with the staff of 3127 out of which 2994 were borrowed from relevant TMAs on 20% additional allowance in their salaries, but it failed to make them deliver. It has run into issues with borrowed staff of TMAs, and has been repatriating them, which has further compromised its ability to deliver. It has not been able to shape up as a competent, honest and service-provider organization.

17. There is, therefore, a need to review the over lapping functions of North Sindh Urban Service Corporation (NSUSC) with Town Municipal Administration (TMA) and Public Health Engineering Department (PHED), which under the law are assigned the duty of providing clean drinking water, maintaining sanitation and hygiene.

18. Responsibility of Government of Sindh: Nobody would deny that it is the constitutional duty of Government of Sindh to ensure provision of potable water, better sanitation and healthy and clean environment for its citizens. Water is life and access to unpolluted water is the fundamental right of every citizen. Under Sindh Local Government Act, 2013 (SLGA), the local Councils (Metropolitan Corporation, Municipal Corporation, Municipal Committee, Town Committee, District Council, Union Committee or Union Council) have been assigned the duty to supply clean drinking water, improve sanitation condition and place an adequate system of public drains. Part II of schedule II of the ibid law depicts how such duty has to be executed. However, the council has to perform such duty in collaboration with and under the supervision and control of Government of Sindh. Chapter-IX of the said law lays down that general supervision and control over the Councils shall remain with the Government to ensure that their activities conform to the purposes and provisions of this law. If it is found that the Council has persistently failed in discharging its duties, the Government can suppress the Council from working and during the period of such suppression can appoint the person or authority to run the affairs of the Council till the Council is reconstituted. Section 74 of SLGA amply empowers Sindh Government to take over the management and control of any institution or service maintained by a Council in such situation. Nonetheless, Sindh Government, as is clear from the above discussion, has not been able to check the rot and improve services of potable water, sanitation and to create better environment. The relevant departments i.e. PHED, Irrigation Department, Local Government/Council, and Planning and Development Department are more interested in development schemes and getting P.C.I etc. approved than doing some actual work to serve the people. This approach was witnessed during the proceedings i.e. the schemes are happily introduced, approvals are

granted, money is spent but, since there is no monitoring of execution and sustainability of such schemes, the end-result is always more chaos than order. Never responsibility is fixed and action taken against those who have failed us. This approach of the Sindh Government is never going to bear any fruit. Merely devising schemes for the above purposes and approving P.C-I etc. and releasing funds for execution of them would not absolve the Sindh Government of its statutory responsibility of providing clean drinking water and healthy hygiene. The failure of the Government to monitor execution of such schemes and their sustainability, and in case of shortcomings to fix responsibility on the all concerned, is itself a failure. There are, no doubt, relevant institutions/ officials and infrastructure to deal with this all, but apparently, the way these institutions are being run and operated by the concerned, they have notably failed to deliver on the issues under discussion.

19. At times, it is noted that there is no dearth of initiative on part of the Government to devise schemes for water supply and sanitation (as the reports of District Judges suggest), and approving P.C-I for execution of such schemes. But these schemes often do not produce the requisite results due to shortcomings left in their execution. Instead of finding out what went wrong with the schemes already put, the approach of the Government has been to approve more schemes in this regard or/and revise already completed schemes but, expectedly until now, to no avail. This process appears to be going on and on without producing any tangible result regarding improvement in delivery system. Another stumbling block in the way of real development appears to be the policy whereby water supply schemes after completion by PHED are transferred to Local Councils/Municipalities, etc. for operation and maintenance. But since the councils have no structural capacity to maintain the same according to the requirement, no real improvement in service delivery to the people is materialized. Nonetheless, Sindh Government does not appear to be keen to take any policy decision to change the current course of affairs and to save whatever is left.

20. The Irrigation Department which is custodian of irrigating canals and River Indus has not been able to stop disposal of solid and untreated liquid waste including industrial effluent into natural watery bodies, which is the main cause of pollution and contamination in the sweet water. The Secretary Irrigation has admitted that they cannot stop inflow of effluent in irrigation canals because they are prevented by District Management from doing so. This statement reflects not only a failure of irrigation department but of the District Management and TMAs, etc. which see the irrigation canals as an easy way to offload their responsibility of managing liquid waste. The Local Councils, Municipal Authorities and PHED or their part have conspicuously failed to make SCARP drains functional and take steps to treat sewage before its discharge in irrigation canals. Due to collective apathy and negligence of these departments, watery bodies have been virtually turned into drainage nallas and people have been made to drink water from these nallas.

21. The hospitals are disposing of their waste with municipal waste or wash it off to municipal drainage system that ultimately ends up in watery bodies. As for infectious waste, the Hospital Managements are either burning it openly or throwing it on the grounds inside the hospital. Generally there in no incinerator in the hospitals but if there is one, it is non-functional and hospitals of both the sectors (government and private) have completely failed to follow the Hospital Waste Management Rules, 2014 for management of hospital waste. The Health Department was found sleeping over this matter, and only after the Commission took up the issue; a committee was formed by the Health Department to look after the issue of waste management.

22. Drainage problem in entire Sindh has gone from bad to worse as there is no network of drains to dispose of sewage in a central outfall drain to carry sewerage to sea in environmentally safe manner without polluting River Indus, lands and water supply schemes etc. The RBOD-II on right side of River Indus which is designed for this purpose i.e. to carry drainage effluent from RBOD-I and RBOD-III for disposal in Arabian Sea in environmentally safe manner without polluting Manchhar Lake, River Indus, Culturable Lands and water supplies for domestic purpose, has become victim of delay, apathy, lack of interest, corruption of executing agencies/officials in the name of inadequacy of funds and dis-connectivity between Sindh Government and Federal Government.

23. It may also be mentioned that there are outstanding bills in respect of water and sanitation charges against Government departments, but they are not paying off the same.

RECOMMENDATIONS

1. At present Karachi has been receiving 650 MGD for drinking against the demand of 11 MGD. Yet for the last 10 year not a gallon of water has been added in the system to overcome the shortage, therefore, new sources of water supply (like KIV 260MGD) may be acquired immediately for Karachi.

2. Karachi has quota of 1200 cusecs water at present and will receive 260 MGD further after completion of k-IV Phase-1, but still the shortage of water will not be overcome, hence this quota may be enhanced in proportion to its population (23 million approximately). And at the same time, it is also necessary to stop unchecked urbanization in major cities to keep the water requirement under control.

3. For providing water to the houses on tail and to the areas where still the water supply system is not available, new distribution lines of water supply may be laid before start of K-IV (260MGD) etc.

4. Orders may be issued for replacing existing poor and faulty infrastructure of water supply lines to reduce water shortage and water contamination.

5. A system of water-meters for bulk purchasers may be introduced immediately. And gradually the domestic users shall be brought in the said net.

6. M.D. KW&SB, SSP concerned and the SHO of the area may be made responsible for eradicating menace of illegal water hydrants, and in case of discovery of the illegal water hydrant, the cases may be registered against them instead of some unknown miscreants.

7. Instead of manually monitoring water distribution, whereby it is not possible to check water theft, puncturing of water lines and running of illegal water hydrants, a modern system based on computer technology with command and control room to monitor water supply and water theft may be immediately put in place.

8. Official water hydrants to meet emergencies may be installed in each location within a radius of 03 kilometer to save transport expenses and erosion of roads caused due to water spillover from tankers.

9. All the Filter plants may be immediately rehabilitated fully and put to work, so that the process of purification of water should commence. And additionally, as the existing Filter Plants' capacity is short of actual requirement, new filter plants may be built to meet current and future requirements.

10. The dosing of chlorination of water to kill bacteria at Filter Plants and water supply schemes may be declared mandatory. And if the KW&SB, WASA, PHED, etc. officials fail to dose water with chlorination, immediate action may be taken against them and punishment awarded. The functionality of Labs at each Filter Plant may be ensured to maintain water quality as per WHO standards.

11. Directions may be issued for establishment of the water-lab at Taluka level near water supply schemes for monitoring quality of drinking water before its supply to the people. The system of a third party monitoring viz. crosschecking by the independent and reputable Labs may be made integral part of water examination in entire Sindh.

12. In Karachi and Hyderabad, from main trunk transaction lines dedicated for domestic consumers, new bulk connections are being allowed resulting in water shortage for domestic users. KW&SB, WASA etc. may be directed to immediately stop this practice.

13. There may be put a complete ban on the construction of multistorey and high rise (vertical) buildings till the water shortage is overcome and new resources of drinking water are put in place.

14. Granting no objection by KW&SB to provide water to multistorey or high-rise (vertical) buildings except to a residential unit having ground plus two storeys may be put on hold till the new sources of water are added to the existing system.

15. The Sindh Building Control Authority collects betterment charges while approving building plans, although the same charges relate to water supply and sewerage, therefore, the same charges/funds may be ordered to be transferred to KW&SB, and WASA.

16. In the governing board of KW&SB and WASA, the representation of civil society etc. to safeguard interests of the citizens may be introduced.

17. In KW&SB, WASA, TMAs, etc. a single-window system may be introduced for sanctioning of water connection and other water-related issues to discourage corruption and corrupt practices.

18. In the Government Departments/Institutions/Agencies/Offices, hospitals, judicial complexes, etc., the water meters may be installed.

19. The private concerns like Shopping Malls, Private Hospitals, Hotels, Restaurants, and Industries etc. may also be subjected to water-metering system immediately.

20. Orders may be passed to install a credible metering system on all the R.O. Plants to verify their production and supply.

21. The present policy of installation of R.O. Plants and their maintenance and operation on public money may be re-examined, as admittedly the quality of water produced and supplied from these R.O. Plants is not being maintained as per WHO standards. The policy of awarding contract of R.O. Plants may be made more transparent and there must be introduced a component of water quality checking at each R.O. Plant through credible lab process.

22. Orders may be passed for removal of the encroachments from all the Effluent Treatment Plants including TP-II Mehmoodabad Karachi, so that they should start treating outgoing toxic effluent of the industries falling in sea. Additionally, more treatment plants, as the capacity of current effluent plants is maximally 150MGD, which is too short to cope up the inflow of 500MGD of sewage, may be built to meet the requirement.

23. Installation of Pre-Treatment Plant within the factory to treat toxic effluent inside the Unit may be declared mandatory and violation thereof be made a cognizable offence. In this regard the responsibility shall be fixed on Industries and Commerce Department and Management the factories themselves.

24. Directions may be issued to the District Management Malir, Irrigation Department, KW&SB and others concerned to immediately take appropriate measures to stop sand-lifting from Malir River bed as this illegal activity has exposed the water conduits supplying water to the entire city namely GK-I, K-II & K-III to damage, and if this practice is allowed to continue, it can lead to dislocation and

blast of said water conduits at any time stopping supply of drinking water to the entire city.

25. The coastal water of Karachi harbor is being damaged due to constant untreated effluent of industrial units and spillover of oil from visiting ships, therefore Karachi Port Trust may be directed to ensure stoppage of oil-spillover from the ships to protect marine life.

26. The possession of Combined Effluent Treatment Plant, Kotri may be ordered to be taken from the contractor immediately and handed over to SITE limited Kotri for operation and maintenance, so that the water of K.B. Feeder, the supply line of Keenjhar Lake, shall be protected.

27. There is lack of awareness among the people about importance of clean water, water-borne diseases due to use of polluted water and other water-related issues. Therefore, the Education Department may be directed to include the subject of provision of safe potable water, sanitation and healthy environment in the curriculum from primary level to create awareness about these issues among the children.

28. Provision of potable water and keeping sanitation at all public offices including schools, and hospitals etc. may be declared mandatory and its non-compliance a cognizable offence. Head/In-charge office/building, school shall be made responsible in this regard.

29. To control water pilferage in Karachi through illegal water connections, illegal hydrants etc., and in rest of Sindh through illegal modules or pipes in irrigating canals, a command and control room may be established in each district.

30. Instead of entrusting water related issues to several civic agencies, there may be constituted a single civic agency or authority like Water Regulatory Authority in each district having representation of persons from civil society etc. to attend to all water supply and sanitation related issues. It shall have a fast, easy, reachable, time-bound and resultoriented system in place for addressing complaints of the people. It may also be mandated to collect all the charges for development, maintenance and up-gradation of infrastructure of the buildings to meet water related requirements on one hand, and on the other to curb red-tape and conflict of interest.

31. In the urban and rural areas of Sindh except Karachi and Hyderabad, Public Health & Engineering Department may be made responsible for providing drinkable water to the people.

32. Directions may be given to the Irrigation Departments and other Departments concerned to establish a water Lab. at Guddu Barrage to examine quality of water of River Indus coming from Punjab so

that the exact volume of water pollution may be gauged for taking necessary steps.

33. The irrigation department may be directed to protect surface water from untreated municipal and industrial effluent being directly discharged into watery bodies, and in case of failure along with related field officers, the Secretary Irrigation Department shall be held responsible. In this regard a network of drains with outfall in RBOD or LBOD as the case may be with a system of siphoning off the drain water from under the irrigation canals at the place of crisscrossing may be laid to save watery bodies from effluent.

34. In order to save sweet water from contamination, the Irrigation Department may further be directed to remove all encroachments (houses, slaughter houses, cattle pans etc.) from the banks of irrigation canals all over Sindh as they are directly discharging their effluent in the irrigation canals.

35. The cattle pans, which cause choking of drains and gutters, may not be allowed to be established within the residential areas of the city. The District Management of each District may be directed to remove all the cattle pans already established within the residential areas of the city.

36. If we have to get rid of effluent being discharged into irrigation channels, the completion of RBOD-II appears to be a must. Directions may be issued to the Government of Sindh and Government of Pakistan to revise and restart the remaining work for early completion of RBOD-II on right side of River Indus, which is designed to carry drainage effluent from RBOD-I and RBOD-III for disposal in Arabian Sea in environmentally safe manner without polluting Manchar Lake, River Indus, Culturable Lands and water supplies for domestic purpose. According to estimation, the latest financial progress of the project up to June 2016 is Rs.28.43 billion which is 97% of the approved cost, whereas the physical progress is 72%.

37. There is no dumping or landfill site in any of the cities of Sindh to manage solid waste, the solid waste is either being burnt in open or thrown in irrigation canals or nallas in some case, or being dumped on makeshift dumping sites and left unattended. Direction may be issues to Sindh Government to immediately establish such landfill and dumping sites so that healthy environment could be created.

38. The Health Department may be directed to ensure installation of incinerators in all government and private hospitals and to take further steps for disposal of all kind of hospital waste in terms of the Hospital Waste Management Rules, 2014, and in case of failure, the Secretary Health shall be held responsible.

39. As the reports of District and Sessions judges have revealed expenditure of billions of rupees for the last five years on the

schemes of water supply and sanitation, but many of them are lying non-functional and even from functional schemes no tangible result improving provision of potable water supply and sanitation is being achieved. The directions to launch investigation into the finances incurred on all such schemes may be ordered.

40. Directions may be issued for investigating the failure of scheme namely Extension/Improvement of Urban Drainage Scheme Jacobabad fixing responsibility on those Executing Officials who are at fault as despite spending about 1200 million on the said project no benefit from it has been extended to the citizens of Jacobabad.

41. Directions may also be issued for investigating the failure of Sewerage Project for Qasimabad, which is part of Hyderabad Development Package, fixing responsibility on those Executing Officials who are at fault as in spite of spending 1700 million on this project, yet no benefit from it has been extended to the citizens of Hyderabad.

42. The direction to the Sindh Government may also be issued for reviewing the current lax Anti-corruption laws and/or replacing them with more stringent laws against corruption, as the current Anti-corruption laws have failed to discourage corrupt practices, which is the main reason of failure. The investigation into corruption matters and the trial thereafter may be ordered to be made time-bound.

43. The whole procedure of devising schemes, decision of technical committee on feasibility of the schemes, administrative approval of funds, release of funds and execution of schemes shall be reexamined and revamped and in this regard some component of judicial overview on the execution of the schemes may be introduced to discourage and curb menace of kick-backs and commissions.

44. All the Department/Agencies of Government of Sindh and Government of Pakistan etc. may be directed to clear off the outstanding dues/bills of civic bodies (KW&SB, WASA etc.). And they may be bound down for future not to commit default in respect of water and sanitation charges so that improvement in service delivery system could be achieved.

45. Due to lack of town planning, the unchecked mushroom growth of housing societies has increased in the cities, which has further aggravated the service delivery in respect of supply of drinkable water and sanitation. Sindh Government and District Management may be directed to strictly monitor such growth of housing societies by adhering to law, rules and regulations concerned with town planning.

46. Public Health and Engineering Department (and any other department) which develops/completes water-related schemes may be made responsible for operation and maintenance thereof, instead of any other department/council.

47. The over lapping functions of North Sindh Urban Service Corporation (NSUSC) with Town Municipal Administration (TMA) and Public Health Engineering Department (PHED), which under the law are assigned the duty of providing clean drinking water, maintaining sanitation and hygiene, may be reviewed.

48. At present SEPA's organizational structure is weak and it is mostly concentrated in few major cities of Sindh; therefore it has failed to deliver. For achieving good results in respect of provisions and objectives of Sindh Environmental Protection Act, 2014, the SEPA needs to be strengthened, reorganized and expanded down to the District level.

49. Last but not the least, until and unless, we implement a system of strict monitoring and fierce accountability within the institutions, we would not be able to realize fruits and results of any hard work undertaken to provide for potable water, better sanitation and healthy environment to the people of Sindh. The current situation, if we have to survive, prosper economically and prove our utility as viable people contributing to the collective betterment of our country, shall not be allowed to continue. We will have to shake off the mind-set of an ostrich who when pursued hides its head in the sand and believes to be unseen. A system of fierce accountability and monitoring is overdue."

5. Before hearing the matter on 06.03.2017, we watched a CD in Court, which was provided by the Petitioner, which was recorded during the visit of the Commission to different cities of Sindh including Karachi, reflecting actual footages/visuals of different cities of the Province. No one has disputed the contents of the footages which graphically showed the actual state of waste and polluted water flowing into canals, channels and river Indus, resulting environmental hazards and human sufferings. Therefore, we find it in order that the CD be sent to the Speaker of the Sindh Provincial Assembly who may arrange its viewing in the august Hall of the Sindh Provincial Assembly to enable the peoples' Representatives/Legislators to have a clear view of the prevailing situation in the Province with regard to the failure to supply potable water and how untreated raw municipal and industrial sewerage are poisoning water bodies and how dangerous and hospital waste is being disposed.

6. The Advocate General requested for time to go through the report of the Commission. Time was granted and the matter was posted for hearing on 08.03.2017. Since 08.03.2017, the matter was heard on different dates and finally on 16.03.2017. During the hearing, the Advocate General Sindh, Deputy Attorney General and the high ups of the Sindh Government were heard. With the assistance of the aforesaid law officers, we have perused the record and the material collected by the Commission. On 16.03.2017, the Chief Secretary Sindh submitted a compliance report that finally a cadre officer, namely Mr. Jamal Mustafa Syed, was appointed as Secretary,

Irrigation Department. Syed Hashim Raza Zaidi, another cadre officer, was appointed as the MD, KW&SB.

7. It was during the hearing of this Petition that we had noticed that the position of Secretary Irrigation, which is a cadre post in terms of the Schedule notified by the S&GAD, was occupied by a non-cadre officer. We, therefore, directed the Sindh Government to immediately appoint a cadre officer as Secretary Irrigation Department. Likewise, the officer who was heading the Karachi Water & Sewerage Board as MD, was also not qualified to hold the office as he was not a cadre officer and we directed his immediate replacement. Similarly, office of the DG, Sindh Environmental Protection Agency (SEPA) was a cadre post and we directed to immediately post a cadre officer as DG, SEPA.

8. The Chief Secretary was further directed to form a task force/committee of experts with the approval of the competent authority to comply with the recommendations made by the Commission in its report. The Chief Secretary placed before us a notification dated 14.03.2017 issued by him with the approval of the competent authority wherein a Committee headed by the Secretary Irrigation Department has been formed on Water Filtration and Sewerage Treatment Plants. The notification reads as under:

"**GOVERNMENT OF SINDH**

SERVICES, GENERAL ADMINISTRATION

AND CO-ORDINATION DEPARTMENT

Karachi, dated the 14th March, 2017

NOTIFICATION

No.SOII(SGA&CD)6-22/2017: In partial modification of this department's notification of even number dated 10.03.2016 and in pursuance of the Honorable Supreme Court of Pakistan's order dated 13.03.2017 passed in C.P. No.38 of 2016, and with the approval of Competent Authority, the Government of Sindh is pleased to constitute a Committee on Water Filtration and Sewerage Treatment Plants with following composition and terms of references:-

1. Secretary Irrigation Department Chairman

2. Secretary, Local Government and Housing Town Planning Department Member

3. Secretary, Health Department Member

4. Secretary, Industries and Commerce Department Member

5. Commissioner (Concerned Division) Member

6. Managing Director, KW&SB, Local Govt. Department Member

7. M.D Water and Sanitation Agency (WASA) Hyderabad Member

8. Mr. Ghulam Murtaza Arain, Director General, Pakistan Council of Research in Water Resources. Member

Terms of References:

Rehabilitation of all Water Filtration and Sewerage Treatment Plants including Gharo Plant.

Rehabilitation of Laboratories for checking qualities of water.

Removal of construction on conduits.

Removal of encroachments from filtration and sewerage plants, if any.

Recommendations for prohibiting untreated direct discharge of industrial effluents, municipal waste and hospital waste into rivers/canals.

Proper Monitoring of water quality.

The Committee will submit periodical reports regarding above matters to the relevant Authorities and Judicial Commission constituted for the purpose.

The committee can Co-opt any member for discharging its functions and may assign any task to any person to achieve the above tasks.

Rizwan Memon

Chief Secretary Sindh

Karachi, dated the 14th March, 2017"

9. The Chief Secretary was directed to modify the aforesaid notification and add D G, SEPA as one of the members of the committee. The notification dated 16.03.2017 has been placed before us whereby DG, SEPA was added as a member and the committee was re-designated as the "Task Force". The amended notification reads as under:

"**GOVERNMENT OF SINDH**

SERVICES, GENERAL ADMINISTRATION

AND CO-ORDINATION DEPARTMENT

Karachi, dated the 16th March, 2017

NOTIFICATION

No.SOII(SGA&CD)6-22/2017: In partial modification of this department's notification of even number dated 14.03.2016 and in pursuance of the Honorable Supreme Court of Pakistan's order during hearing on 17.03.2017 passed in C.P. No.38 of 2016 and with the approval of Competent Authority, the Government of Sindh is pleased to constitute a Task Force on Water Filtration and Sewerage Treatment Plants with following composition and terms of references:-

1. Secretary Irrigation Department Chairman

2. Secretary, Local Government and Housing Town Planning Department Member

3. Secretary, Health Department Member

4. Secretary, Industries and Commerce Department Member

5. Commissioner (Concerned Division) Member

6. Director General, Sindh Environmental Protection Agency Member

7. Managing Director, KW&SB, Local Govt. Department Member

8. M.D Water and Sanitation Agency (WASA) Hyderabad Member

9. Mr. Ghulam Murtaza Arain, Director General, Pakistan Council of Research in Water Resources. Member

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Rehabilitation of all Water Filtration and Sewerage Treatment Plants including Gharo Plant.

Rehabilitation of Laboratories for checking qualities of water.

Removal of construction on conduits.

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Recommendations for prohibiting untreated direct discharge of industrial effluents, municipal waste and hospital waste into rivers/canals.

Proper Monitoring of water quality.

The Committee will submit periodical reports regarding above matters to the relevant Authorities and Judicial Commission constituted for the purpose.

The committee can Co-opt any member for discharging its functions and may assign any task to any person to achieve the above tasks.

Rizwan Memon

Chief Secretary Sindh

Karachi, dated the 16th March, 2017"

10. The DG, SEPA is a cadre post notified in the Schedule issued by the S&GAD. The Sindh Government within four days shall appoint a cadre officer as DG, SEPA and compliance report shall be sent to us by the Chief Secretary for our perusal in chambers. The Task Force shall immediately start its work under the supervision of the Chief Secretary himself and shall report to the Commission comprising of Mr. Justice Muhammad Iqbal Kalhoro, which will continue to work as Commission in terms of the orders of this Court passed on 27.12.2016 with the further powers to ensure compliance of the recommendations made in his report and continue taking all steps to achieve the objective for which the Commission was formed.

11. In addition to the above recommendations in the Commission's report further directions may also be issued by the Commission. The proposed Task Force shall comply with the directives contained in this order and report compliance to the Commission as well as to this Court through the Registrar, for our perusal in Chambers.

12. Pursuant to the order dated 06.03.2017, four of the five water filtration plants and three sewerage treatment plants were visited and a brief report with photographs thereof was submitted in Court (CMA No.160-K of 2017).

Irrigation Department

13. Before we proceed to record findings on the working of the Irrigation Department, we would like to reproduce the statement of the then Secretary, Irrigation Department, Government of Sindh, recorded by the Commission:

Mr. Ahmed Junaid Memon, Secretary to Government of Sindh, Irrigation Department was examined by the Commission. He has also filed the statement. According to which, there are three (03) Barrages in Sindh Province viz. Guddu, Sukkur and Kotri. Sukkur Barrage was constructed in 1932, with canal command area of 7.630 million acres. The Kotri Barrage was constructed in 1956 with canal command area of 3.006 million acres. The Guddu Barrage was constructed in 1962 with canal command area of 2.179 million acres, accumulated total command area being 13 million acres. The Irrigation Department is also custodian of drainage system spread over 5 million acres of land, the network being about 5000 miles. Nine systems of Drainage network have direct disposal in sea, whereas system in upper Sindh i.e. Ghotki, Shikarpur, Larkana Districts have several small drainage schemes disposing of in Irrigation Channels. The dilution ratio of Panchu water drainage schemes having disposal in Irrigation Channel is maintained to keep quality of water within allowable admissible range for agriculture

usage. The Civic agencies mostly dispose of sewerage effluent in canals, without concurrence of Irrigation Department, which causes pollution in canal water. The action is being tolerated as there is no alternate for disposal of sewerage generated by growing population of the cities. On hindrance in such disposal the district administration intervenes as the thickly populated areas are inundated, and often sewers and water supply lines are integrated causing severe health problems. For domestic usage the source of water supply to civic agencies are Irrigation channels, but limited to provisions of raw water. The extracting agency is liable for treatment of this water to make it fit for drinking as per WHO standard.

In his further statement, the Secretary Irrigation has stated that the Irrigation Department is responsible for provision of raw water from canal networks as per convenience of location to the civic bodies on their demand and approval of Irrigation case. Extraction of Water at source and processing of raw water i.e. disinfection, filtration and internal distribution to housing is responsibility of the Local body concerned or the Local Government; and likewise for disposal of sewerage into the water bodies, the civic agencies are responsible to treat sewerage before discharging the same in the canal networks."

The above statement of the Secretary Irrigation shows that the Irrigation Department is criminally negligent in performing its functions allocated to it under Schedule-II to the Sindh Government Rules of Business, which are reproduced hereunder:-

1. Barrages, construction work and all matters connected therewith.

2. Electricity.

3. Flood Control Scheme.

4. Irrigation:

a) Rivers and riverian surveys.

b) Construction and maintenance of canals.

c) Tube-wells and other water utilization Scheme.

d) Embankments;

e) Drainage;

f) Storage of water and construction of reservoirs; and

g) Matters pertaining to distribution of river supplies.

5) Kinjhar Lake.

6) Land Reclamation Schemes and administration of the Soil Reclamation Act, 1962.

7) Water logging and salinity schemes.

8) Services matters, except those entrusted to the Services, General Administration and Coordination Department."

14. We are at loss to understand as to how the Secretary, Irrigation, can make such a statement before the Commission that he has failed to discharge his duties on account of hindrance caused by the local administration. The Irrigation Department has never bothered about the discharge of municipal, medical and industrial waste in the rivers, channels and canals. This criminal act on the part of the Irrigation Department has exposed the residents of Sindh to different water borne diseases such as Cholera, Typhoid, Hepatitis A&E, Gastroenteritis, Diarrhea and skin diseases. It is multiplying the agonies of the poor residents of Sindh, who are left with no option but to drink polluted and poisoned water. Provision of clean water for drinking is the duty of the State. Instead the functionaries of the state are allowing waste of the three kinds to be tossed into the Rivers, Canals and Channels which the Irrigation Department is required to maintain. Nothing is being done by the departments though they receive huge amounts from the Government for performing the functions mentioned hereinabove. We direct the Sindh Government, especially the Irrigation Department, to immediately minimize the pollution in the aforesaid arteries used for providing supply of clean drinking water to the public in Sindh. The Task Force shall immediately take remedial steps to stop this menace and report its progress to the Commission within one month.

Water Treatment Plants

15. There are five water treatment plants: (i) COD Hills, (ii) Hub, (iii) North East Karachi (NEK), (iv) Pipri and (v) Gharo. The petitioner and Prof. Dr. Muhammad Ahsan Siddiqui stated that they visited four of the five plants (Gharo was not visited) and that these four plants had laboratories and staff to test the quality of water, however, either these laboratories were not fully equipped/ functional and/or the staff did not have the requisite qualification /training. It was further pointed out that the quality of water leaving certain plants was comparably better than others, however, as water from different treatment plants finds its way into the same water channel it undermines the purity level achieved by the better plant. Therefore, unless the water from all the water filtration plants is free of contamination, the desired results would not be achieved. Another concern articulated is that the integrity of the monitoring mechanism is doubtful as entries with regard to tests are made by hand which can be backdated/manipulated, and there does not exist a central data collection and monitoring of the water quality results. Dr. Siddiqui also referred to the chlorinator which utilizes chlorine gas and pointed out that in some of the plants the chlorinator either was not working or chlorine gas to run it was not available. He stated that repairing of the chlorinator may be time consuming and expensive, however, the problem could be

immediately redressed by using sodium hypochlorite to make the water potable.

Sewerage Treatment Plants

16. There are three sewerage treatment plants: (i) installed at SITE also known as STP-I or TP-I, (ii) at Mehmoodabad also known as STP-II or TP-II, and (iii) at Mauripur also known as STP-III or TP-III. Not a single one of these plants is working; and this, we have been informed, is the position for the last several years. Consequently, raw and completely untreated sewerage is sent into the Arabian Sea, bordering one end of Karachi. At these non-functional treatment plants, we are informed, 141 personnel of KSB are still "working".

17. With regard to TP-II different views were expressed including that a large part of the land earmarked for treatment/lagoon/storage of sewerage was leased out by the KMC and another large portion has been illegally encroached upon. Therefore, without first repossessing the encroached and/or leased land it will not be possible to make this plant operational. Another view was that even if the illegally encroached land is repossessed the plant could not be made operational.

18. Mr. Wasim Akhtar, the Mayor of Karachi Metropolitan Corporation ("KMC"), acknowledged that KMC had leased out a portion of the land of TP-II and that an inquiry is being conducted in this regard. He further stated that to attend to the larger good of the city and its people KMC could explore sites where the persons who had been leased land could be given alternative land and resettled. He further stated that KWSB was not performing its statutory functions which can be gathered from the fact that its Board met on February 7, 2017 after a period of about 6 years; the last meeting of the Board was held on August 1, 2011. The Board's meeting of February 7, 2017 was attended by him in his capacity as Mayor, but he stated that serious issues were not attended to and mostly ex-post facto ratification of water connections was granted.

19. The Karachi Water and Sewerage Board Act, 1996 ("the Act") established "a Board for supply of water and disposal of sewerage in the Karachi Division". Amongst the specified powers and functions of the Board is, "to ensure that the water supplied by it is duly filtered, treated and tested and is fit for human consumption" (subsection (2) of section 5 of the Act). The Board is also required to construct, maintain and operate, "sewerage works for collecting, pumping, treating and disposing sewerage and industrial waste" (clause (b) of sub-section (vii) of section 3 of the Act). But as reported, and not disputed by KWSB, it has failed to fulfill its primary statutory mandate; un-filtered, un-treated and un-tested water is being supplied and the entire sewerage of Karachi, one of the largest metropolises in the world, is dumped untreated into the Arabian Sea.

20. We were informed that KWSB has around 13,000 employees, but is still not able to fulfill its basic statutory duties and despite the large number of employees, the appalling malfunctioning continues unabated. The minutes of the last meeting of the Board show that the demands of the Combined Bargaining Agent ("CBA") of the KWSB are being met whilst disregarding KWSB's statutory mandate. The poor taxpayers and citizens of Karachi have paid heavily for setting up water filtration plants and sewerage treatment plants, but regretfully the water filtration plants are not properly functioning and the sewerage plants lie derelict. In failing to perform its statutory duty KWSB has exposed the residents as well as all visitors to the City to avoidable water-borne diseases. It is estimated that four-fifths of all illnesses are caused by water-borne disease, many of which result in fatalities. As a consequence of the callous disregard by KWSB of its duty, government hospitals are over burdened by those suffering from water-borne diseases and many citizens who avail of private treatment also have to incur avoidable expense.

21. The citizens of Karachi are punished still further by the dumping of raw sewerage into the Arabian Sea which contaminates the beach and the coast and poses yet another health hazard. The people are also deprived of the enjoyment of the city's beaches for health and recreation. There is no monitoring of the beach water quality, however, as raw sewerage is released into the Sea the dangers of swimming or wading in such water are manifold. The beaches are also littered with dangerous waste, which the tides deposit on the beach, such as discarded injection needles.

22. We have also noted that though KWSB cannot provide basic services yet it continues to expand its network by granting approvals to new housing schemes in a purely mechanical manner and by ex-post facto approvals. KWSB appears oblivious to the Fundamental Rights of citizens, including the right to have uncontaminated water to drink which can be considered the bedrock to the right to life (Article 9 of the Constitution). The rivers and other water channels in Karachi have also been rendered open sewers by raw effluents. If not rectified immediately this state of affairs may lead to an epidemic of infectious diseases.

23. As regards the immediate issue of the water filtration plants, during the hearing a consensus developed that the credentials and competence of all laboratory personnel be checked, and thereafter competent persons should provide them with training and subsequently all personnel be tested to ascertain whether they have acquired the requisite skills. Dr. Siddiqui stated that one month training would be sufficient to train the personnel who are engaged in the laboratories of the water filtration plants. It was also agreed that the laboratories and the plants should be inspected periodically to ensure that they have the requisite instruments, chemicals and equipment and wherever there is a shortfall this should be attended to. The first inspection by experts should be undertaken immediately. Needless to state that the deficient instruments and

equipment which are not very expensive should be immediately procured. The mechanism whereby the data from all the water filtration plants can be electronically collected and compiled at each plant and also transmitted to a central point should also be examined immediately and requisite measures be taken.

24. To attend to the non-functioning of the water filtration plants and the sewerage treatment plants TP-I and TP-III we had directed the Chief Secretary Sindh to constitute a committee to ensure the rehabilitation of all the water filtration plants and to ensure that the laboratories are equipped with necessary instruments for proper monitoring of water quality.

25. As regards TP-II, its site should be inspected and the area of its land which has been illegally encroached upon and leased by the KMC should be determined and alternative land be given and/or compensation paid to the affected households. We direct KMC, Board of Revenue and KWSB to submit their separate reports in this regard. The minimum area of the land that is required to make TP-II functional shall be determined by KWSB and once this has been accomplished, devise a mechanism to repossess it.

26. The Commission report has also shown concern about the medical waste and the industrial waste generated by the hospitals and industries situated in Karachi.

27. The Task Force shall ensure that the all the filter/ treatment/sewerage plants in Sindh inclusive of Karachi, Hyderabad, Sukkur and Kotri shall be made functional. It shall submit detailed periodical reports to the Commission. The Task Force shall also make functional all the incinerators installed in the Government hospitals as per the undertaking given by the Health Secretary in Court on 11.03.2017 (Report No. 25-K/2017).

28. The representative of the Karachi Port Trust ("KPT") stated that the harbour is polluted by industrial effluents, sewerage and solid waste. He stated that there are 13 water channels/drains which empty out into the harbour and these water channels/drains are not within the KPT's jurisdiction and/or control. We further inquired from him whether KPT has tried to resolve this issue with KWSB or the Sindh Solid Waste Management Board ("SSWMB"). Incidentally Chairman KPT is a member of KWSB, but surprisingly not of SSWMB, though the Government under section 5(1) of the SSWMB Act, 2014 is empowered to, "change the composition of the Board". We were informed that plastic bags and other solid waste is also a hazard for the propellers of boats and ships. KPT, KWSB and SSWMB are public agencies and must ensure that the harbour is not polluted, but unfortunately it is filthy. We therefore direct the Chairman of KPT, MD of KWSB and MD of SSWMB to personally examine all the water channels/drains that bring and discharge effluents and solid waste into the harbour and the Karachi coast, devise practical, inexpensive and immediate measures from their existing budgets initially to prevent the pollution of the harbour and

the Karachi coast. Each of them are directed to submit their separate reports in this regard (with photographs/videos recordings) within one month.

Reverse Osmosis/Filtration Plants

29. The Commission has observed regarding RO plants in its report as under:-

"In order to examine the issue of R.O. Plants installed for providing drinking water to the people in district Tharparkar and other cities alleged to be facing scarcity of water, Mr. Ajaz Ahmed Additional Secretary Special Initiative Department (SID) and Mr. Nafees Ahmed Sheikh P.D. DWH SID; Mr. Agha Wasif, Secretary Energy Department, and Mr. Danish Saeed, Director General, Sindh Coal Authority were examined on 13.02.2017 and 14.02.2017 respectively. They have furnished details of R.O. Plants, cost on their installation and the amount being spent on operation and maintenance of each R.O. Plant. They were confronted with the facts noted by the Commission during visit of R.O Plants in district Tharparkar, Thatta, UmerKot and other places. They could not establish the quality of water being produced from the R.O Plants and were unable to deny that there was no laboratory available in UmerKot, Thatta, Tharparkar etc. where water tests on all the parameters which include physical/aesthetic, chemical and microbiological to determine quality of water were being conducted.

However, there is a laboratory in R.O. Plant Mithi which was referred to by them and which, during its visit, was shown to the Commission conducting water tests. But the testing process there was found highly flawed, and concerned only with chemical standards of water. It was noted that merely as a formality the activity of testing was shown to be going on, which belief was further fortified from examination of a lab report dated 05.11.2016 (Annexure AE) showing volume of Total Dissolved Solids (TDS) as 392, against 297 volume of chloride, 193 of sodium and 8 of sulfate, which collectively is (498) more than total volume of 397 shown in said report. The staff available in the lab could not explain such glaring anomaly in the report. The test to determine quality of water at R.O. Plants requires utmost attention and scientific skill because from these R.O. Plants water for drinking is being provided, but the result of above lab report has clearly indicated an indifferent approach on this sensitive issue by the lab staff in Mithi R.O. Plant. At the same Plant it was also noted that although Pak Oasis (the company which is operating and maintaining the RO Plant having capacity of 2MGD) claims to produce and supply up-to 10 lac gallons of water per day for Rs.160/- per 1000 gallons water, but there was no measuring system to gauge such quantity of water to justify the claim and the payments it receives in this regard from the Sindh government (Sindh Coal Authority). This question was particularly asked from Mr. Agha Wasif and Mr. Danish Saeed (as this RO. Plant has been installed by Energy Department and it is paying for its O&M.) and they were shown the aforesaid lab report,

but they could not reply satisfactorily and instead filed an evasive report on 15.02.2017, which too does not provide any satisfactory answers to above questions. It is also relevant to mention here that a visit of Narejo Village R.O. Plant at Thatta led to discovery of 1364 TDS volume (1000mg/L) in water being supplied to the people for drinking (Annexure-AF); and it was informed that this was the first time the water quality of that R.O. Plant was ever tested. These facts show clearly that payments in the name of O&M of the R.O. Plants (production and supply of water) are being made by these two departments without actually checking either the quality or quantity of the water. A perusal of the statements and details furnished by Special Initiative Department and Sindh Coal Authority have revealed that there is no proper structure or skilled manpower with these two departments to keep watch on the quality and quantity of the water being produced by the R.O. plants. Therefore, there appears no justification to continue with these R.O. Plants and spend millions and millions of rupees blindly on their so-called O&M, when we neither know the quality of the water being supplied from these Plants nor the quantity against which we are making payments. The details furnished during enquiry by Special Initiative Department reveal following facts.

A scheme was devised to install two thousand (2000) R.O Plants in three phases. The phase-I started in the year 2012 and completed in 2015. In first phase 500 R.O Plants of different types (UF/Nano/RO Technology) depending on quality of raw water at each location have been installed by M/s. Pak Oasis Industries (Pvt.) Ltd., Suite No.5, 1st Floor Nadir House, I.I. Chundrigar Road Karachi.

i. Nano Filtration Plant with TDS 3500 ppm = 200

ii. R.O Plants with TDS 15000 ppm = 200

iii. Ultra Filtration Plant TSS = 100

The cost of installation of said Plants is Rs.3016.701,928 million (Rupees Three Thousand, Sixteen Hundred Million, Seven Lac, One Thousand Nine Hundred and Twenty Eight.). And they have been installed in different cities of Sindh viz. Karachi, Hyderabad, Tando Mohammad Khan, Matiari, Dadu, Badin, Thatta, Mirpurkhas, Umerkot, Sanghar, Tando Allahyar, Sukkur, Ghotki, Khairpur, Naushero Feroze, Shaheed Benazirabad, Larkana, Qambar, Jacobabad, Kashmore and Shikarpur under incumbency of different Project Directors of Project Management Unit Drinking Water Hub (DWH), Special Initiative Department, Government of Sindh. However, subsequently the cost of installation was revised and increased to Rs.3860,052,908/-. Out of 500 R.O Plants, only 393 are shown operational, the rest for one reason or the other are not working yet.

The Annual operation and maintenance cost at each RO Plant being paid by Special Initiative Department to the contractor Pak Oasis is as under:-

PLANT	NUMBER	O&M COST PER PLANT PER MONTH	O & M COST PER MONTH	O&M COST PER YEAR	O & M COST FOR 3 YEARS
R.O Plants with TDS 15000 ppm	200	Rs.14,500/-	Rs.29,00,000/-	Rs.3,48,00,000/-	Rs:10,44,00,000/-
Nano Filtration Plant with TDS 3500 ppm	200	Rs.10,000/-	Rs.2,000,000/-	Rs.24,000,000/-	Rs.72,000,000/-
Ultra Filtration Plant TSS	100	Rs.7,945/-	Rs.794,500/-	Rs.9,534,000/-	Rs.28,602,000/-

Going by above calculation, it is clear that Pak Oasis is receiving Rs.56,94,500/- per month and Rs.6,83,34,000/- per year and Rs. 20,50,02,000/- for every three years in the name of operation and maintenance of R.O Plants installed in phase-I.

The Phase-II also started in the year 2012 and is due to be completed in 2017. In this phase 750 R.O Plants of different types depending on quality of raw water at each location are to be installed by Pak Oasis, the same company.

i. Nano Filtration Plant with TDS 3500 ppm = 150

ii. R.O Plants from TDS 3500 to 15000 ppm = 260

iii. R.O Plants from TDS 15000 to 30,000 ppm = 010

iv. Ultra Filtration Plant TSS = 330

The total cost of these Plants is Rs:4,000/- million (Rupees Four Thousand Million.) and have to be installed in different cities of Sindh. Out of 750 R.O Plants, 531 RO Plants have been completely installed but only 379 are operational, and work on remaining plants is said to be going on. The annual operation and maintenance cost at each RO Plant is as under:-

PLANT	NUMB	O&M	O & M	O&M COST	O & M COST

	ER	COST PER PLANT PER MONTH	COST PER MONTH	PER YEAR	FOR 3 YEARS
R.O Plants with TDS 15000 ppm	260	Rs.30,000/-	Rs.78,00,000/-	Rs.9,36,00,000/-	Rs.28,08,00,000/-
Nano Filtration Plant with TDS 3500 ppm	150	Rs.20,000/-	Rs.30,00,000/-	Rs.36,000,000/-	Rs.10,80,00,000/-
Ultra Filtration Plant TSS	330	Rs.12,000/-	Rs.39,60,000/-	Rs.4,75,20,000/-	Rs.14,25,60,000/-
R.O Plants with TDS 30000 ppm	10	Rs.40,000/-	Rs.4,00,000/-	Rs.48,00,000/-	Rs.1,44,00,000/-

Going by the above calculation, it is obvious that Pak Oasis is charging Rs.1,51,60,000/- per month, Rs.18,19,20,000/- per year and Rs.54,57,60,000/ for every three years in the name of operation and maintenance of R.O Plants installed in phase-II.

The Phase-III also started in the year 2014 and is due to be completed during 2017. In this Phase 750 Containerized Solar R.O Plants having capacity of 2000 liters per hour with tendency to remove feed water TDS up to 10000 ppm at different villages of Tharparkar at the cost of Rs.5254.00 million are to be installed by the same company Pak Oasis. Out of 750 R.O Plants 527 R.O Plants have been installed but only 500 of them are operational, the remaining are yet to be installed.

The annual operation and maintenance cost on each RO Plant being paid to Pak Oasis is as under:-

Plant	Number	O & M cost per	O & M cost per month	O & M cost per year	O & M cost For 3 years

		plant per month			
Containerized Solar R.O. Plants with TDS 10000 ppm	750	Rs. 20,000/-	Rs.1,50,00,000/-	Rs. 18,00,00,000/-	Rs. 54,00,00,000/-

Pakistan is receiving Rs.1,50,00,000/- per month and Rs.18,00,00,000/- per year and Rs.54,00,00,000/ for every three years in the name of operation and maintenance of R.O Plants installed phase-III.

Sindh Coal Authority has installed 118 R.O. Plants in district Tharparkar, Umerkot, Badin and Thatta. Mr. Danish Saeed D.G. Sindh Coal Authority has filed an evasive statement in respect of procedure of checking quality and quantity of water being produced and supplied from R.O. Plants, which he was asked during enquiry. When he was examined on 14.02.2017, he disclosed that they are two big R.O. Plants one at Mithi and the other at Islamkot with the capacity of 2MGD and 1.5MGD respectively, the rest are small R.O. Plants. On big R.O. Plants, Rs.160/- per 1000 gallons of water and on small R.O. Plants 0.14 per gallon water are being paid by Sindh Coal Authority in terms of agreement. And when he was asked, how the quantity of water being produced and supplied from R.O. Plants was being analyzed for the sake of payments, he could not reply satisfactorily, and conceded that there was no measuring system to gauge exact volume of production and supply of water in R.O. Plants, however he had sought time to file report in this regard. The statement filed by him on 15.02.2017 has been perused and examined in such context and found lacking in respect of above details, which is indicative of the fact that Sindh Coal Authority has no justification to show for the payments so far made by it to Pak Oasis.

Apart from abovementioned Plants, 19 R.O. Plants in Karachi have been installed through Karachi Water and Sewerage Board by Pak Oasis, 06 in Layari at the cost of Rs.2360.169 million and 13 in Kiamari Town at the cost of Rs.3407.515 million (Total Cost Rs:5767.684 million). The installation of R.O. Plants started in the year 2011 and completed in 2013. Out of 19 RO Plants, two are non-functional. On their operation and maintenance, Local Department Government of Sindh through KW&SB has been paying following cost to Pak Oasis.

O & M COST ON 19 RO. PLANTS	**YEAR OF O & M**	**AMOUNT RELEASED**	**AMOUNT PAID**
	2013-2014	Rs.62,68,50,000/-	Rs.62,68,50,000/-
	2014-	Rs.86,81,00,000/-	Rs.85,80,00,000/-

	2015		
	2015-2016	Rs.86,81,00,000/-	Rs.82,72,65,691/-
TOTAL AMOUNT		Rs.2,36,30,50,000/-	Rs.2,30,75,24,685/-

The water quality on these RO Plants is also not being checked to ensure drinkability of water as per WHO standards.

It must be mentioned here (which I have come to understand in this enquiry) that the official version of the R.O. Plant being functional means its mechanical process i.e. rotation of pumping motors for extracting water from underground, is running. It does not mean, and it has not been established either by the departments concerned that functionality of R.O. Plants means and would imply quality of water to be potable as well, for throughout the enquiry except the mechanical process of the R.O. Plants, nothing else as a proof of their running was emphasized or shown. And it goes without saying that mere running of mechanical process to extract water would not mean that that potable water is being provided to the people. There are no credible laboratory test reports of water of these RO Plants to disprove this conclusion.

A reading of papers has further revealed that contract of all the R.O. Plants has been awarded to Pak Oasis without completing due formalities. The report of Director General Audit Sindh (Annexure K-1) submitted during the inquiry has pointed out to this fact, besides revealing many discrepancies in the tendering process causing huge loss to the Government in the whole scheme of R.O. Plants. The question whether or not while awarding contract to the company the Sindh Public Procurement Rules were followed need to be examined and investigated."

30. In view of the aforesaid sad state of affairs, we are compelled to direct the Sindh Government to withdraw the installation and maintenance work of RO/Filter plants from the Special Initiative Department and/or the Sindh Coal Authority and to assign it to the Public Health Engineering and Rural Development Department to be the executing department as mandated by the Sindh Government Rules of Business. It will also be the responsibility of the said Department to maintain the RO/filtration plants.

31. As regards Pak Oasis, the Commission has reported that it did not have the capacity to meet the need nor the infrastructure. The installation/maintenance of RO/filtration plants is the function of the Public Health Engineering and Rural Development Department under the Rules of Business. The Secretary of the said department shall collect details of the RO plants installed throughout Sindh and submit it to the Commission with the status as to whether the RO plants are functional or not. From today onwards, the Public Health Engineering and Rural Development Department shall be responsible for installation and/or maintenance of all the RO plants

in the Sindh Province. The Task Force shall also submit its report to the Commission in this regard.

Rural Water Supply Scheme

32. Even this scheme throughout Sindh has been neglected as the Government has not provided resources to the concerned department, namely Public Health Engineering Department, which is meant to execute and maintain the scheme under the hierarchy of elected bodies of the local government. The Public Health Engineering Department shall be strengthened and provided infrastructure with requisite trained manpower to undertake its job in terms of Rules of Business framed under the provisions of Article 139 of the Constitution. The Task Force notified by the Government shall remedy the shortcomings in the scheme and submit periodical reports to the Commission. The functions of the Public Health Engineering Department under the Rules of Business are as under:-

"1. Executing of Urban and Rural Water Supply and Drainage Schemes except Karachi (KW&SB areas) and Hyderabad WASA areas) and on completion; handing over to respective local council for operation and maintenance.

2. Operation and Maintenance of Water Supply and Drainage Schemes especially assigned to PHED.

3. Executing/installation/maintenance of RO Plants/Ultra Filtration plants.

4. Executing of foreign funded/Assisted Projects/schemes assigned to PHE and RDD.

5. Execution of approach Roads to connect Form to Market Roads, covering villages having population of upto 1000 souls.

6. Installation of Solar lights in Rural Sindh.

7. Other development schemes as assigned through Chief Minister's directives.

8. Schemes recommended/sponsored by MNAs, MPAs, Senators and donor agencies etc.

9. Service matter of officers/officials in PHE and RDD except those assigned to SGA&CD."

Sindh Environmental Protection Agency (SEPA)

33. The Commission regarding SEPA has observed as under:-

"Sindh Environmental Protection Act, 2014 (2014 Act), has been enacted by Government of Sindh to protect, conserve, rehabilitate, and improve the environment and to prevent and control pollution. And SEPA has been created under Section 5 of 2014 Act to regulate

and monitor enforcement of the provisions of the Act. In the given capacity SEPA has to address environmental issues and perform its assigned duties, which, inter alia, include, to administer and implement the provisions of 2014 Act and the relevant rules and regulations; to prepare environmental policies; prepare and publish an annual Sindh Environment Report on the state of the environment in the province; to ensure enforcement of Sindh Environmental Quality Standards; to establish different standards for different areas for discharge of emission from different sources; to establish systems and procedures for surveys, surveillance, monitoring, measurement, examination, investigation, research, inspection and audit to prevent and control pollution, and to estimate the costs of cleaning up pollution and rehabilitating the environment in various sectors; to take measures to promote research and the development of science and technology which may contribute to the prevention of pollution; to identify the needs for and initiate legislation in various sectors of the environment; to render advice and assistance in environmental matters including such information and data available with it as may be required for carrying out the purposes of 2014 Act; to assist Government Agencies, local councils, local authorities and other persons to implement schemes for the proper disposal of wastes so as to ensure compliance with the Sindh Environmental Quality Standards; to provide information and guidance to the public on environmental matters; to recommend environmental courses, topics, literature and books for incorporation in the curricula and syllabi of educational institutions; to promote public education and awareness of environmental issues through mass media and other means including seminars and workshops; to establish and maintain mechanisms, including its own website, to disseminate information regarding policies, plans and decisions relating to the environment; to undertake inquiries or investigation into environmental issues; establish and maintain laboratories to conduct research in various aspects of the environment etc.

During the enquiry, M.D.SEPA and other official were called and were asked about their performance in the light of duties and functions assigned to them under the law. They filed a number of statements and documents. Their stance mainly has been that SEPA is suffering from lack of financial resources, lack of manpower, lack of structural organization, and absence of due authority to enforce completely 2014 Act; SEPA needs to be expanded at district level; fully staffed; fully resourced with provision of Research and Development Budget; needs police assistance for enforcement of Environmental Laws; better and strong prosecution cell; and rapid response from Local Government organizations, like KW&SB, WASA.

The SEPA at present is working with 36 Technical Officers from BPS 17 to 20 and 28 Environmental Inspectors. The budgetary allocation of whole setup of SEPA for 2016-17 is Rs.168 million, out of this, Rs.142 million are for employees related expenditure and remaining amount is allocated for operational expenditure. Additionally SEPA

has been allocated during current financial year an amount of Rs.150 million for execution of five annual development schemes addressing to conservation of natural resources.

After examining SEPA officials and perusing the statements submitted by them, it is not hard to conclude that SEPA's initiative is mainly confined to the office files, writing letters and issuing notices. SEPA was prompted into action only after the Commission started examining its role in view of its duties and functions stipulated in 2014 Act. SEPA was reminded that majority of the Industrial Units have not installed wastewater treatment plant in compliance of 2014 Act, but it has not acted beyond issuing some notices and in some cases referring the matter to the Tribunal constituted under 2014 Act. SEPA's claim that due to its efforts 75 industrial units in Karachi division and 34 in rest of the divisions of Sindh have installed wastewater treatment plants inside the premises could not be established authentically. When on 01-02.2017, Mr. Waqar Hussain director SEPA was asked, he could not reply satisfactorily how the performance of these treatment plants was being observed. He conceded that SEPA officials do not check and test randomly effluent of the Units where treatment plans have allegedly been installed, and if ever any inspection of the Unit is carried out, its information in advance is conveyed to the Unit almost a weak prior to the date. He disclosed that the test reports of effluent were being submitted by these industries on monthly basis, but admitted that entire process of taking samples and getting them tested from the laboratory is done by the Factory itself. He could not show or establish that the cross-checking by a third party of the results of the reports submitted by factories in this connection have ever been done. Obviously, therefore, the veracity of these reports is but doubtful. There is no credible record of any visits paid by SEPA officials to the factories to monitor and check compliance of environmental provisions and monitor alleged treatment of the effluent. It must be mentioned that that the notice of enquiry to the Associations of Industries was also issued to know their response on the matter, in reply of which they have filed the statements, but none of them could show successfully that the factories are running a pretreatment plant inside the premises.

SEPA does not employ any scientific methodology to monitor ecological degradation caused by direct inflow of untreated effluent in sea. No exact data of all the industries functioning in Sindh is available with SEPA. The number of factories generating toxic effluent or not is also not known to SEPA. During the enquiry, SEPA officials informed that they had divided industries into (3) three different categories viz. category-A that produces highly toxic effluent, category-B produces less toxic effluent and category-C comprises mainly dry Units, but they could not produce any record indicating the exact number of Units falling in either of the category. Only after the Commission asked about such data, the SEPA started collecting it, and then during proceedings produced some incomplete and unauthenticated figures in this connection. The factories are

directly discharging untreated effluent in watery bodies, but SEPA did not appear to be duly concerned about it, and it did not seem to have an idea as to how and to what extent the untreated effluent is destroying the flora, fauna and biodiversity of coastal waters. During the physical visit of SEPA's office by the undersigned on 12.01.2017, it was observed, which was not denied by the official present there, that in Chemical Lab, Analytical Lab and Microbiological Lab no work had been done for the last many years. The expensive laboratory equipment available in those labs seemed untouched and unused. The state-of-the-art Air Monitoring System to evaluate air pollution was installed on the roof of SEPA's office, but it appeared to have never been put in use. Besides, a modern ambulance was seen rusting in the premises. In reply to a query, the officials replied that an entire scheme was needed to put all these appliances in use.

During the enquiry, SEPA officials maintained that because of their actions, many changes have occurred, like installation of waste water Treatment Plants in factories, legal action against factories which do not install pretreatment plants, stoppage of burning of old batteries at Hyderabad and Karachi, prevention of dumping and burning of solid waste in Karachi, management of hospital waste, monitoring of cement industries in Sindh, stone crushing units, prohibition on non-degradable plastic products, compliance of environmental law in Sugar Mills in Sindh, etc. But neither the effect of above actions could be witnessed by the Commission during the visits, nor SEPA could produce any authentic record showing tangible results so far achieved in any of the above fields. The factories are still discharging waste water without treatment, hospital waste is in disarray and is mostly being burnt inside hospital premises, and Sugar Mills do not seem to be bothered about complying with environmental laws and are discharging waste without treatment in watery bodies. The coast is constantly experiencing degradation due to constant inflow of untreated effluent and spillover of oil from ships, yet SEPA is making claims of performance.

It is obvious that SEPA, at least in the present situation and in the present set-up, is not able to deliver and perform, in spite of having ample powers under 2014 Act, which include entering into lease, purchase, sale, convey any assets and property; fixing and realizing fees rates charges; entering into contracts for proper management of its business; appointing advisors, experts and consultants for efficient performance of its functions; summoning and enforcing attendance of any person; inspecting under the search warrant any place where SEPA has information that an offence under 2014 Act has been committed or is likely to be committed; taking samples of any material, substances etc. being discharged or emitted in air, water and on land; arranging for the testing of such samples; confiscating any article used in the commission of offence; etc."

34. After going through the portion of the aforesaid report of the Commission, we have reached the conclusion that D.G, SEPA Mr. Naeem Ahmed Mughal has never put in hard work nor made any

serious effort to make functional a well equipped laboratory in Karachi. He failed to offer any plausible explanation to this Court. We on inquiry were informed that he was not even eligible to hold office of D.G, SEPA as he was not a cadre officer. We, therefore, had directed to replace Mr. Naeem Ahmed Mughal with a cadre officer of good administrative skill to make functional not only laboratories of SEPA but other responsibilities in terms of the Sindh Environmental Protection Act, 2014 and the Rules framed thereunder to save this Province from environmental hazards to save the public of the Province from pollution and prepare environmental policies.

North Sindh Urban Services Corporation Limited (NSUSC)

35. The Commission noticed about NSUSC as under:-

The NSUSC has been established under the Companies Ordinance 1984 for improving municipal infrastructure of the secondary cities located in northern Sindh which include Sukkur, New Sukkur, Rohri, Khairpur, Larkana and Shikarpur, Jacobabad & Ghotki. The NSUSC is outcome of Sindh Cities Investment Improvement Program (SCIIP), whereby under Multi-tranche Financing Facility (MFF), Asian Development Bank (ADB) was to provide $300 million over a period of 10 years till 2018 to finance the Government of Sindh's $400 million program to improve water supply, wastewater management, and solid waste management services in a cluster of secondary towns. This program (SCIIP) supports (i) establishment of local government-owned, professionally managed utility companies; (ii) priority investment in water supply, wastewater, and solid waste management infrastructure; and (iii) urban sector reforms and capacity development, including an Urban Policy and Strategic Planning Directorate at provincial level and for overall program implementation.

The concept of the program to establish local government-owned and professionally managed utility companies for improvement of above services for the cities may be good enough and meant to avoid corruption, failure, inaction and lethargy of relevant government departments in providing the said services. But in the way of executing this program, the whole idea seems to have been lost. No improvement in quality of water, and in the state of sanitation in the cities under NSUSC control was witnessed by the undersigned during the visit. The unfiltered water without even chlorination is being provided to the people for drinking in Sukkar and Jacobabad and other cites under NSUSC control. The sewerage without any treatment is being conveniently discharged in River Indus or its tributaries. During the enquiry, the stance of NSUSC officials mainly was that the relevant projects were underway and would be completed by June 2018 (the year when the contract with ADB would expire), and thereafter improved services for potable water and sanitation would be provided to the people. NSUSC officials in the statements have given reference to ongoing schemes/projects, however, in justification of the amount already spent, they have not been able to show any tangible result so far achieved in respect of

supply of quality water and sanitation. It has been noted by the Commission that in Tranche-I and Tranche-II of the loaning facility, millions of dollars have been handed over to NSUSC but it has failed to extend any actual benefit to the common man. That has even been admitted by NSUSC in the words that "due to variety of reasons, any project under Tranche-II could not start until June-2015". And in NSUSC's view "The projects under Tranche-II are expected to be completed by June 2018". In Tranche-I millions of dollars are shown to have been spent on the purchase of Solid Waste Management Equipment, installation of generators at pumping and disposal stations and on providing drinking water to district Khairpur, the quality of which NSUSC could not establish, but on the contrary the report of PCRWR (reproduced in this document hereinafter) has shown the clear picture of water quality being provided there. And in respect of solid waste or the sanitation condition of the cities nothing substantial for improving quality of service in these areas was witnessed. Most of the heavy vehicles/loaders for lifting solid waste and other equipment available at NSUSC office Larkana were found out of order. The solid waste was littered on the streets; hospital waste was being burnt inside hospital or thrown in open. No municipal service was visible. The streets in Shikarpur were also full of puddles and pungent and drainage water. Solid waste in heaps was available in front of the houses and shops. There is in fact nothing, NSUSC can boast of in terms of either quality of water or better sanitation in Sukkur, New Sukkur, Rohri, Khairpur, Shikarpur, and Larkana and justify spending huge amounts of money. Regarding water quality in Khairpur, which is the only silver lining as per claim of NSUSC, the report of PCRWR is self-explanatory, and further it may be mentioned that quality of water being provided there has never been cross-checked to determine its physical, chemical and microbiological parameters, nor has NSUSC been able to produce any water test report of any independent and reputable lab covering all the above parameters. The photo state copies of test reports of water of Khairpur submitted by NSUSC are of no use and help to it.

Following is the detail of expenditure on capital and operational charges submitted by NSUSC.

SUMMARY OF OPERATING EXPENSES AND CAPITAL EXPENSES FROM INCEPTION TILL DATE (REGION WISE)

FISCAL YEAR	HEAD OFFICE	SUKKUR	ROHRI	SHIKARPUR	LARKANA	KHAIRPUR	JACOB-ABAD	YEAR-WISE OPERATING EXPENSE
2009-10	16,530,922	-	-	-	-	1,068,689	-	17,599,611
201	68,791	37,686,	20,764	17,581	16,313	24,339	-	185,477

0-11	,486	698	,427	,822	,234	,426		,093
2011-12	64,062,959	118,162,768	44,595,155	29,740,588	29,354,625	39,078,939	-	324,995,033
2012-13	82,092,838	137,417,506	75,297,500	30,744,857	51,446,019	52,385,380	-	429,384,101
2013-14	93,362,102	185,284,464	56,171,195	41,832,736	69,127,316	52,321,132	-	498,098,945
2014-15	123,149,953	175,628,467	50,439,797	42,889,296	79,394,719	67,654,925	-	539,157,157
2015-16	107,968,810	404,641,067	83,502,355	83,151,917	148,353,651	142,166,912	19,997,974	989,782,685
Sub-Total	555,959,070	1,058,820,969	330,770,429	245,941,216	393,989,564	379,015,403	19,997,974	2,984,494,625

Capital Expenditure from 2010 to date	HEAD OFFICE	SUKKUR	ROHRI	SHIKARPUR	LARKANA	KHAIRPUR	JACOBABAD	TRANCHE-WISE CAPITAL EXPENSE
Tranche-1	92,934,035.85	1,056,608,174.77	137,746,689.32	168,881,598.33	458,800,877.99	1,118,924,410.37		3,033,895,786.63
Tranche-2		344,954,000.00	119,070,000.00	119,070,000.00	119,080,000.00	119,100,000.00		821,274,000.00
Sub-Total	92,934,035.85	1,401,562,174.77	256,816,689.32	287,951,598.33	577,880,877.99	1,238,024,410.37	-	3,855,169,786.63
GRAND TOTAL	648,893,105	2,460,383,143.99	587,587,118	533,892,815	971,870,442	1,617,039,813	19,997,974	6,839,664,411.45

KARACHI

Karachi is not only the largest but most populous city of Pakistan, besides being capital of Sindh. The city is ranked as country's premier industrial and financial center. Situated on the Arabian Sea,

Karachi serves as a transport hub, and is home to Pakistan's two largest seaports, as well as the busiest airport in Pakistan. Its population is estimated to be around 23 million. The water requirement of Karachi has reached around 1100MGD, but currently the water being supplied to Karachi is not more than 650MGD. There is a huge gap between demand and supply.

The water for Karachi is transmitted first to Keenjhar Lake from Indus River through K.B Feeder and from Keenjhar Lake to Dhabeji Pumping Station and Gharo Pumping Station. A total of 582 MGD Water from Keenjhar Lake is being channeled for consumption of Karachi. 30 MGD is going to Gharo Pumping Station, 25 MGD to Pakistan Steel Mills, 07 to Port Qasim and 520 MGD to Dhabeji Pumping Station. From Dhabeji Pump House the water is being brought to a high point namely "Fore-Bay" situated 4-1/2 K.Ms away at the height of 212 feet from sea level. Three conduits (viz. Pipri, K-II and K-III) originate from this point, which take water to Karachi City. Through these conduits 140 MGD water is being brought at Pipri Pump House and Filter Plant, 140 MGD at COD Filter Plant/Pump House, 100 MGD each at North East Karachi Filter Plant and University Reservoir, 20 MGD at North East Karachi Filter Plant (old) and 20 at interconnection dumlottee for supplying to various parts of the city. From Hub Dam 100 MGD water is being channeled through Hub canal to Manghopir Filter Plant and supplied, but the availability of water in Hub Dam is entirely dependent upon runoff water, which could reduce to zero in draught conditions.

Quality of water in Keenjhar Lake, which is the main source of water for Karachi, has deteriorated due to constant discharge of industrial untreated effluent in K.B Feeder by the industries located in SITE Kotri. And additionally from the recharge dam constructed about eight (08) years ago by Irrigation Department intercepting Loyachh/Kaloo river (the original dumping site of effluent) at about 3 kilometers from SITE Nooriabad where effluent of factories in Nooriabad is now being accumulated and discharged in the Keenjahar Lack during rain when dam overflows.

To treat effluent of SITE kotri, a Combined Effluent Treatment Plant (CETP) was installed in the year 2010 with the cost of 721.41 million born by Sindh Government, but it is not functional and is still in possession of the contractor. On 20.01.2017, the undersigned paid a visit to this facility. The staff available there claimed that CETP was fully functional and not a drop of water was being let in K.B. Feeder without treatment. Dr. Ahsan Siddique, the water technologist who was with me and who had taken samples of effluent from-there for testing, disputed said statement. He asserted that industrial effluent with high volume of COD and BOD was being discharged in K.B. Feeder. His assertion has been proved by the test results of effluent-samples taken from the outfall of CETP waste water in K.B. Feeder (Annexure-AG). At CETP no laboratory was available to monitor wastewater pollution, and no past record of any activity relating to treatment of effluent was produced either. Even it was not informed

that when the chemical in Chemical Tanks meant for treating effluent was changed last. The oxidation ponds and clarifier did not appear functioning. The villagers of nearby area who had gathered there disclosed that CETP mostly remained closed except when any visit was paid by any government official. The person who was in-charge there said that he was contractor and had not yet handed possession of the facility to SITE Limited Kotri for want of some financial liability still outstanding against it, but claimed that he was running the CETP. However, he could not explain how and why he was bearing its operational and capital charges. About this Treatment Plant, the chief secretary, Sindh in his statement dated 03.02.2017 has informed that "The CETP scheme was envisaged to provide treatment facility for the waste water treatment from different industrial units to prevent contamination of natural water resources. The scheme would treat 2.5 MGD of effluent and for safe disposal the combined effluent will provide physical, chemical biological treatment of waste discharge besides sludge dewatering and chlorination of waste effluent". It is further informed that "SITE Ltd. would take over the plant from the Contractor immediately and complete the remaining work on priority. For completion of the scheme in all respects a sum of Rs.35.00 million would be provided by the Government of Sindh. The Industries Department in collaboration with Kotri Industrial Estate would devise a mechanism for operation and maintenance of the CETP on sustainable basis".

From the above statement and the report of Dr. Ahsan, it is obvious that CETP Kotri is not yet functional and until it is reclaimed and rehabilitated, the wastewater of SITE Kotri would continue to pollute K.B. Feeder whose water is ultimately provided to the people of Karachi for drinking.

In the statements submitted by M.D KW&SB and other officials, they have claimed that 450MGD out of 650MGD water being supplied is duly filtered and chlorinated and there is only shortfall of 200 MGD in filtration capacity and that too is for want of new Filter Plants for which they have no resources. However, at the same time they conceded that due to system insufficiency, required level of chlorination is difficult to maintain, and further because of intermittent water supply on account of huge gap between demand and supply, the water gets contaminated as the pipes remain empty due to which negative pressure is created. But they maintained, that this issue can be completely addressed if the system is operated 24/7 supply basis. The undersigned, however, decided to visit the said filter plants to verify veracity of the statement of KW&SB's officials regarding filtration, chlorination and providing potable water from the filer plants to the people of Karachi."

36. While examining the aforesaid Organization, we have heard the acting M.D, Mehmood Abbas Rizvi, the Chief Secretary, Advocate General and other officials of Sindh Government. The concerned office has produced before us material which includes minutes of a meeting dated December, 15, 2016 held under the Chairmanship of the Chief Minister Sindh wherein serious concerns about the work of

NSUSC were noted including the fact that janitorial staff, despite receiving an additional 20 percent monetary incentive, are "unwilling to work". The Additional Chief Secretary (Development) pointed out that the lender (ADB) had "serious reservations and concerns about it" and hinted that it will be better to "close the company". A number of members who participated in the meeting have also raised their concerns about NSUSC. The Principal Secretary to the Chief Minister categorized the program as "ill conceived and ill planned." It was also minuted that two cities, Larkana and Shikarpur, had elected to leave the program under NSUSC.

37. This is a government owned company and has been created to improve municipal infrastructure in Northern Sindh, which includes Sukkur, New Sukkur, Rohri, Khairpur, Shikarpur, Larkana, and Jacobabad. The Commission has submitted an alarming report where it has found that the NSUSC has utterly failed to deliver. It has neither the expertise nor the skill to cater to the schemes. We are further shocked to notice that it did not have a regular M.D for the last three years and the different letters of the Government, made part of this record, reflect no confidence in NSUSC. The Government in-fact has already withdrawn two cities namely Shikarpur and Larkana from the purview of NSUSC. Relevant portions of the minutes of the meeting held on 15.12.2016 wherein it was decided to withdraw Shikarpur and Larkana, from NSUSC are reproduced hereunder:-

"A meeting was held on 15th December, 2016 under the Chief Minister Sindh to discuss and decide the various issues faced by North Sindh Urban Services Corporation (NSUSC). The meeting started with recitation from Holy Quran and introduction of all the participants.

2. The Chair welcomed all the participants. He informed the participants that he has received various complaints regarding the dismal performance of NSUSC and he has been requested by the elected representatives of Larkana, Shikarpur and Jacobabad to windup the company. However, before taking any final decision in this regard he would like to listen all the stakeholders and the management.

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6. Mr. Naveed Kamran Baloch, Principal Secretary to Chief Minister, opined that the program was ill conceived and ill planned and may be closed forthwith and the assets may be returned back to the respective TMAs and efforts may be taken for their capacity building. Mr. Saeed Awan, Secretary (GA) SGA&CD (he also remained PD, SCIP in the year 2011- 12) also stated that he sees no future for sustainability of company for next 20 years despite introduction of revised tariff, Government has to spend a lot of funds as subsidy to run the company. He suggested that the operation of NSUSC may be

transferred back to TMAs, and it may be turned into Infrastructure Development Company for completing the capital works under Tranche-II.

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8. Mr. Mehmud Shah, Acting MD, NSUSC apprised the Chair that the condition of the company is very grim. The employees have not been paid salaries for the last two months. The SEPCO has been threatening to cut-off the electricity for non-payment of dues. The Government may decide whether to continue the operations of the company or otherwise. He requested the chair that there is a dire need for a subsidy from the government for continuing the operations as ADB has refused to provide funds for the operational activities of the company.

9. Mr. Anwar Ali Khan Mahar, Chairman BoD, NSUSC stated that at present no funds are available with NSUSC to continue its operations in all the coverage cities. He requested the Chief Minister, Sindh to drop the cities of Larkana and Shikarpur from NSUSC Coverage area

ADB Concerns about NSUSC:

ACS (Dev.) informed the Chair about the serious reservations and concerns shown by the Country Director, ADB in his letter dated 13th December, 2016. He suggested that after reviewing the ADB concerns if the Chair decides to continue the company then drastic measures would be required to restructure the Company in order to ensure that the investments made under the Company would be beneficial for the common people. If the Chair decides to close the company, the decision may be taken now so that necessary steps may be taken for smooth transition of assets to the respective TMAs and for timely closure of the program.

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12. After detailed discussions following decisions were taken:-

i. The Cities of Larkana and Shikarpur to be dropped from the NSUSC coverage area."

38. In this regard, a letter was also written by the Sindh Government to the Secretary, Economic Affairs Division, Government of Pakistan, on 09.01.2017 to apprise the Asian Development Bank. The letter is reproduced as under:-

"**SAY NO TO CORRUPTION**

No.P&D/FA/ADB-NSUSC-233/2013-14

GOVERNMENT OF SINDH

PLANNING & DEVELOPMENT

DEPARTMENT

(FOREIGN AID SECTION)

Karachi dated 06th January, 2017

To,

The Chief Secretary,

Economic Affairs Division,

Government of Pakistan,

Islamabad.

Subject: DECISION REGARDING DROPPING OF LARKANA & SHIKARPUR CITIES FROM NSUSC COVERAGE AREAS

I am directed to refer to the subject noted above and to state that the Honourable Chief Minister, Sindh chaired a meeting on 15th December, 2016 to discuss and decide various issues faced by North Sindh Urban Corporation (NSUSC). One of the decisions taken in the meeting was as under:-

"The cities of Larkana & Shikarpur to be Dropped from the NSUSC coverage area."

2. In view of above, it is requested the Asian Development Bank may be apprised of the decision of Honourable Chief Minister, Sindh for further necessary action.

-sd-

(Raja Masroor Hassan)

Assistant Chief (Foreign Aid)

C.c. to:

The Country Director, Asian Development Bank, Level 8, North Wing, Serena Office Complex, Khayaban-e-Suhrawardy G-5 Islamabad.

Program Director, Sindh Cities Improvement Program, P&DD, GoS, Karachi

P.S to ACS (Dev) P&DD, GoS, Karachi

P.S to Secretary (Planning) P&DD, Government of Sindh, Karachi."

39. On 16.03.2017, Mr. Amjad Hussain Durrani, former Chief Internal Auditor of NSUSC voluntarily appeared before the Court and made a statement that he was appointed as the Chief Internal Auditor on 21.1.2013 and was thrown out in January, 2015 as the

then M.D Abdul Majeed Pathan wanted him to submit audit reports in the manner he dictates. He contended that he has submitted a detailed internal audit report showing the misuse of funds and raised serious objections to the manner the funds were being utilized. According to him, his internal audit report speaks volumes of misuse of funds.

40. The acting M.D. NSUSC present in Court conceded that for the last three years there has been no internal auditor in NSUSC. We inquired from him the reason for non-appointment of the Internal Auditor. He could not offer any plausible explanation. Even the Commission while conducting inquiry has observed that the acting M.D in-spite of the repeated directions of the Commission failed to submit the details of accounts. This Court also directed the submission of detailed accounts, drawn and utilized by the NSUSC till date. No details with any supportive material have been placed before us, which implies that the management of the NSUSC is not clean and amounts are not being utilized in a transparent manner.

41. The Chief Secretary Sindh, on instructions, stated that the Sindh Government is ready to transfer all the functions of the municipal bodies of different cities back to the concerned Local Bodies as NSUSC has failed to perform its functions (water supply, sanitation and solid waste management). The Chief Secretary further states that Government is willing to wind up NSUSC on account of its failure to deliver. The Chief Secretary stated that more than 800 persons have been employed by NSUSC without the approval of the Sindh Government on daily wages and contract basis. The Sindh Government has to pay 3.5 millions monthly towards the salaries of the employees of NSUSC. According to him, the Company has been provided the employees of the TMAs from different cities. In addition to their salaries paid by the Sindh Government, these TMA employees are drawing 20% above of their salaries for working in NSUSC, which is an additional burden on the public exchequer on the Sindh Government. Under these circumstances, the Chief Secretary states that the Government is not interested in allowing NSUSC to continue the municipal functions of the local bodies. According to the Chief Secretary, there are two schemes in hand in Sukkur with NSUSC; one scheme relates to water pumps and the other scheme relates to the procurement of solid waste disposal machinery. As far as the water pump scheme is concerned, he states that it is nearing completion whereas the other scheme of procurement of the solid waste disposal machinery will also be completed soon. He requests that these two schemes be allowed to be completed by existing mode through NSUSC, subject to the monitoring by the Secretary Public Health Engineering Department, which is the administrative department for NSUSC for execution of said schemes.

42. In this backdrop, we are constrained to direct the Sindh Government to withdraw all municipal functions (i.e. water supply, sanitation and solid waste disposal) of all the cities within the purview of NSUSC forthwith as has been done in the case of

Shikarpur and Larkana cities and transfer these functions to the Public Health Engineering Department. The NSUSC shall in the intervening period provide all the details of any nature as and when required by the Commission. On completion of the two schemes referred hereinabove, NSUSC shall be wound up. The NSUSC shall neither be disbursed nor receive any amount hence forth either by the Provincial Government or by Asian Development Bank on any count. The daily wager or contract employees appointed by NSUSC shall not be paid by the Sindh Government and the employees of TMAs shall immediately report back to their parent departments.

43. The Government of Sindh in the intervening period is further directed to order forensic audit of the NSUSC from the date of its creation till today through A.F. Ferguson and Co. The proposed forensic audit shall contain the amount it has received either from the Asian Development Bank or from the Provincial Government or from any other source and shall provide all the details of the disbursement of the aforesaid amounts to the proposed Auditors. This forensic audit shall be completed within two months from the date the services of A.F Ferguson and Co are hired. The Sindh Government shall hire the services of the said company within two weeks from today and a compliance report in this respect shall be sent directly to this Court, and a copy thereof to the Commission. The proposed Auditors shall submit the forensic audit report in sealed cover directly to the Registrar, Supreme Court and the Commission.

Sindh Solid Waste Management Board

44. The Commission regarding Sindh Solid Waste Management Board observed as follows:-

"**Issue of Solid Waste in Karachi**

In Karachi it is estimated that 12,000 plus tons of solid waste, which includes domestic, industrial and hospital waste, is being produced. Approximately 9000 tons of solid is being produced in the areas under DMCs, and remaining 3000 in the Cantonments, etc. Despite such huge load, Karachi has no Garbage Transfer Stations (GTS). In visits of Karachi, the garbage was mostly found littered around the corners of the streets or dumped on make-shift locations/sites or being burnt openly generating injurious smoke around. But neither the DMCs nor the Cantonment Boars or Sindh Solid Management Board appeared sensitized to that situation.

Dr. Atur Das Sajnani, the current head of Sindh, Solid Waste Management Board (SSWMB) created under Sindh, Solid Waste Management, Act, 2014 was examined. He has also filed a concise statement duly supported by his affidavit. Explaining the object of the Board, he has stated that the SSWMB has been created to establish "Integrated Solid Waste Management System" in all cities of the Province. The SSWMB is responsible for collection and disposal of solid waste and other wastes including Municipal Solid

Waste, Industrial Solid Waste and Medical/Hospital Waste in the entire Province of Sindh. However, the Board is required to take over solid waste management function gradually from the Councils and other bodies and till such time they will continue to manage the solid waste in their respective areas. It is only when Local Government will notify transfer of the functions from the Councils to the Board through official notification; the Board will take up the task of solid waste management. He further disclosed during enquiry that so far the Board has not been assigned any operational work except maintaining two dumping sites namely Surjani Town and Goand Pass, where 40% of garbage is being brought. He also disclosed that remaining garbage mainly ends up in different nallas or burnt locally. He admitted that no landfill site has been established so far. According to him, entire solid waste is currently being managed by the DMCs. He further disclosed that officially he had inspected budget of the DMCs for the years 2015-16 and 2016-17 and had come to know that Rs.6 + something billion per year expenditure on management of solid waste was reflected in their budget books. And it was in addition to the grants, not reflected in the Budget book, being doled out to them by the Government.

The Municipal Commissioners and other relevant officers of all the DMCs Karachi were examined on 13.02.2017. They all conceded that they were not lifting the entire solid waste from their respective areas, which, according to them, was due to shortage of vehicles and funds. However, the detail of expenditure submitted by them shows that averagely every DMC in Karachi is spending millions of rupees per month, yet they have not been able to properly manage solid waste. For the current poor management of solid waste in Karachi, the DMCs are responsible.

District Municipal Corporation Malir Karachi The staff at DMC Malir is 336. Amount incurred on their salaries is Rs.13,800,000/-. Average monthly expenditure on repair and maintenance including Diesel is Rs.7,000,000/-. Garbage generated per day is 750 tons; of which 450 tons is lifted and dumped at Sharafi Goth, whereas Garbage backlog is 9000 tons per month. 27 different types of vehicles are being used for collecting solid waste.

District Municipal Corporation Karachi Central The staff at DMC Karachi Central is 3157. Amount incurred on their salaries is Rs.64,562,333/-. Average monthly expenditure on Diesel is Rs.14,272,244/-. Garbage generated per month is 59800 tons; but only 55536 tons is lifted and dumped on a site outside of the city. Garbage backlog is 4264 tons per month. 118 different types of vehicles are being used for collecting solid waste.

District Municipal Corporation Korangi The staff at DMC Korangi is 1544. Amount incurred on their salaries is Rs.36,656,764/-. Average monthly expenditure on operation and maintenance including Diesel is Rs.29,381,546/- Garbage generated per day is 1200 tons; 800 tons is lifted and dumped on site namely Jam

Chakro. Garbage backlog is 400 tons per day. 59 different types of vehicles are being used for collecting solid waste.

District Municipal Corporation Karachi East The staff at DMC Karachi East is 1531. Amount incurred on their salaries is Rs.42,696,863/-. Average monthly expenditure on operation and maintenance including Diesel is Rs.33,270,460/-. Garbage generated per day is 1200 tons, which is lifted and dumped on a site outside of the city. 116 different types of vehicles are being used for collecting solid waste.

District Municipal Corporation Karachi South The staff at DMC Karachi South is 2083 against total strength of 3372. Amount incurred on their salaries is Rs.45,842,134/-. Average monthly expenditure on operation and maintenance including Diesel is Rs.32,400,000/-. Garbage generated per day is 1150 tons; 1100 tons is lifted and dumped on a site outside of city, Garbage backlog is 50 tons per day. 124 different types of vehicles are being used for collecting solid waste.

District Municipal Corporation Karachi West The staff at DMC Karachi West is 1741. Amount incurred on their salaries is Rs.336,684,691/-. Average monthly expenditure on operation and maintenance including Diesel is Rs.1,266,144,157/-. Garbage generated per day is 1730 tons; 1210 tons is lifted and dumped on a site outside of the city, Garbage backlog is 520 tons per day. 88 different types of vehicles are being used for collecting solid waste."

Solid Waste

Hyderabad is producing a huge quantity (there is no study to indicate exact amount) of solid waste including hospital waste, but the system to manage it is simply non-existing. No designated dumping or landfill sites are available for disposal of solid waste in Hyderabad. People make their own arrangements for disposing of solid waste. Resultantly, the garbage is mostly dumped on the banks of irrigation canals located around the city or it is burnt around the corners of streets. The hospital waste is being disposed of by either washing it off into municipal drainage system or by burning it inside the hospital. The dangerous and infectious waste of hospitals (government and private) that is required to be segregated and burnt in incinerator is being thrown openly in the hospital premises. The incinerator available in Liaqat Medical University Hospital (LMUH) is completely nonfunctional. Medical Superintendent LUMH was examined on this issue but he could not satisfactorily reply as to why the incinerator was not being made functional for disposal of infectious waste. It is obvious that the Hospital Waste Management Rules, 2014, which provide for a complete guideline on the subject, are being flagrantly violated with impunity by LMUH or for that matter by all the government hospitals over all Sindh. In fact there is no mechanism in Health Department to monitor waste being produced by the hospitals including private hospitals! The Health

Department has completely failed to take any action in this regard or to chalk out a strategy to deal with the situation.

During enquiry, Mr. Zahoor Ahmed CMO Municipal Committee Qasimabad, in reply to a question to explain failure of Municipal Committee in dealing with solid waste, disclosed that many Muslims have been appointed as sanitary workers who do not perform janitorial duty, as a result of which garbage is being accumulated in the localities. However, he could not satisfy the Commission why the action against them was not being taken and why they were being paid salaries. It is relevant to mention here that this situation i.e. Muslims being appointed sanitary workers, who subsequently refuse to perform janitorial duty, has been witnessed by the Commission in many cities of Sindh.

45. The details gathered reflect that this Board has been created under the Sindh Solid Waste Management Board Act, 2014. The functions assigned to this Board under the statute are (i) collection and disposal of solid waste, (ii) to arrange for effective delivery of sanitation service, (iii) to provide free environment and deal with other relevant matters. Basically the functions assigned to this Board have been carved out from the domain of the municipal bodies with the intent to improve the collection and disposal of solid waste from different cities particularly from Karachi. After going through the report of the Commission and watching the CD, which was made during the visits of the Commission to different cities of Sindh including Karachi, we are very much disturbed. The agony of the public at large in Sindh is increasing day by day though the Sindh Government is spending billions of rupees on the subject. In Karachi, the issue is worsening.

46. In local government departments, the Sindh Government has allocated the budget to a union council of the union committee as under:-

"**LOCAL GOVERNMENT DEPARTMENT**

A) UNION COUNCIL/UNION COMMITTEE

Total Rs.200,000/- per month (Share)

Distribution

For Salary component ..Rs.70,000/- to Rs.80,000/-

For other utilization ..Rs.110,000/- to Rs.130,000/-

B) TOWN COMMITTEE

Total Rs.400,000/- per ward per month share which is disbursed for Salary and other utilization.

C) MUNICIPAL COMMITTEE

Total Rs.500,000/- per ward per month share which is disbursed for Salary and other utilization.

Note:- Thirty (30%) percent share in addition has been increased for all Local Bodies and all have been allowed to recruit sanitation staff as well."

47. The aforesaid amounts include the salaries of sanitary workers within the union councils, union committees, town committees and municipal committees. These sanitary workers who are being paid by the Sindh Government through local government department are required to collect and dispose of the solid waste as was being practiced the day this country was created. Instead of making improvement on the aforesaid functions of the local bodies in addition to the budgetary allocation to the local government departments, the Sindh Government has introduced the Sindh Solid Waste Management Board Act, 2014, assigning most of the functions which the sanitary workers of the local bodies were to perform and for which they are being paid their salaries on regular basis. Every year, an amount of 35 crores is allocated to the Board out of which 20 crores is spent on the salaries whereas 15 crores are spent on non-salary account. This Board has not done anything till date to remedy the agonies of the residents of the cities except on papers where it is shown to be active. The ground reality is that this Board is replica of the NSUSC, which was drawing handsome amounts from Asian Development Bank and the Sindh Government and prima facie these amounts were misused and abused by the Management of NSUSC. Likewise now we have been informed that in Karachi in order to collect and dispose of solid waste the organization has entered into an agreement with the Chinese firm. The financial details are as under:-

Financial Implications of F.E. Collection

(All DMCs)

S.No.	Area	Estimated MSW per year (In Ton)	Rate Per Ton	(Per Ton x Annual=Annual Estimated Expenditure)
1	DMC South	491,590	$29.00	$14,254.405
2	DMC East	322,357	$29.94	$9,650,724
3	DMC Korangi	567,699	$30.97	$17,580,392
4	DMC Central	727,332	$32.33	$23,514,572
5	DMC West	632,439	$30.56	$19,327,336
6A	DMC Malir	225,935	$30.56	$6,904,574

6B	District Council	96,360	$30.56	%2,944,574
TOTAL in US&		**3,063,712**		**$94,174,912**
TOTAL in Pak Rupees				**PKR 9,888,365,760**

Daily Financial Implications of F.E

Collection (DMC East & South)

Area	**Estimated MSW per Day (In Ton)**	**Rate per Ton in PKR**	**Rate per Ton in US$**	**(Per day Garbage X Per ton Expend = Daily Estimated Expenditure in PKR)**	**(Per Ton X Monthly= Annual Estimated Expenditure) in US$**
DMC South	1,366	PKR 3,045	$29	PKR 4,158,032.08	$39,600
DMC East	895	PKR 3,144	$30	PKR 2,814,983	$26,809
Total	2,261	PKR 6,189	$59	PKR 6,973,015	$66,410

Monthly Financial Implications of F.E

Collection (DMC East & South)

Area	**Estimated MSW per Day (In Ton)**	**Rate per Ton in PKR**	**Rate per Ton in US$**	**(Per Ton X Monthly Garbage=Monthly Estimated Expenditure) in PKR**	**(Per Ton X Monthly Garbage=Monthly Estimated Expenditure) in US$**
DMC South	40,966	PKR 3,045	$29	PKR 124,741,470	$1,188,014
DMC East	26,863	PKR 3,144	$30	PKR 84,457,272	$805,890
Total	67,829		$59	PKR 209,198,742	$1,993,904

48. We have gone through the details and have also heard the Incharge, Solid Waste Management Board, Karachi. If we go through simple calculations, the Board has to pay almost 29 dollars per ton for collecting solid waste from front point and disposing it at transit point. Each truck normally can carry 12-15 tons of solid waste, which means more than 435 dollars per truck will be paid to the Chinese company by the local government in foreign exchange for the aforesaid job. This amount if converted into Pakistan rupee will come to more than Rs. 46110/- approximately (calculated @ $ 1= Rs.106/-). Is it a feasible project where the Sindh Government on one hand is paying for salaries of the sanitary workers within the local bodies and in addition for the same job would be paying additional amount to the Chinese company to collect solid waste

from the front end and transport it to the transit point. There is nothing on record to show that the Board or the local government has even marked and/or allocated any land fill side for disposal of the solid waste which needs to be transported from transit point for disposal to land fill site. This matter needs to be attended to immediately. On one hand the Sindh Government is paying public money towards the salaries of the sanitary workers and on the other hand through the agreement with the Chinese agency it is required to pay in foreign exchange for the job which ex-facie would not improve the disposal of solid waste in Karachi.

49. The Incharge of Sindh Solid Waste Management Board was heard by us. We are not impressed by his skills and/or expertise as he has no administrative experience of the job description. If this Board is allowed to exist, it would be a permanent liability of the Sindh Government. The Sindh Government is the trustee of the public money and is accountable for the amounts it spends on the schemes. The report of the Commission is a charge sheet with regard to the working of various departments in the Sindh Government, including the Solid Waste Management Board which has failed to deliver even though the Management is drawing salaries in crores of rupees and a substantial amount is being paid for non-salary expenses. Now introducing the arrangement with a Chinese company but without any infrastructure provided for disposal of the solid waste from the transit point to land fill sites would multiply the problems in Karachi.

50. We under these circumstances are compelled to observe that this Court has serious reservations with regard to the continuation of Sindh Solid Waste Management Board programs, which have failed to deliver in any part of Sindh including Karachi, and as the Government continues to also pay to Local Government Departments for the same work. Such amounts need to be utilized by strengthening the departments which are meant for the aforesaid job. Running a parallel organization to perform the same function leads to bad governance and lack of responsibility and accountability, which is sadly the order of the day, as clearly demonstrated from the material collected by the Commission and by viewing the recordings. Experiments should end now. The non-functional Board which has never performed should be dissolved by transferring its functions to the local bodies as provided under the Rules of Business. In doing this, the agonies of the residents of the cities will be minimized. It will also save the Sindh Government from waste of public money of which the Sindh Government is trustee.

51. After going through the material collected by the Commission, the CD visuals and footages, which we have watched ourselves in Court and hearing the law officers and the high ups of the Sindh Government and others, we are clear in our mind that the Commission comprising of Mr. Justice Muhammad Iqbal Kalhoro appointed pursuant to our direction by the Hon'ble Chief Justice of Sindh High Court shall continue to work with all such powers conferred on it by this Court in terms of the order dated 27.12.2016

as the issues in these proceedings have direct impact on the life and health of the public of Sindh. The Commission shall ensure compliance of the directions contained in this order and shall also take all steps to see that the Task Force constituted by the Sindh Government pursuant to the direction of this Court on 14.03.2017 shall comply its recommendations contained in the report. The Commission shall be at liberty to pass orders as High Court Judge whenever it is necessary in the public interest for achieving the object for which it has been constituted. All Provincial, Federal Government Departments, statutory bodies, agencies, companies under their patronage shall be bound by the directions and orders issued by the Commission. The Commission in addition to the Task Force/Committee may seek information or any detail in regard to any question relatable to water or sanitation problems in any part of the Sindh. All concerned should periodically report to the Commission to ensure that the matters which have been highlighted in the report and noticed by us are redressed. The Hon'ble Chief Justice of Sindh High Court may ensure that Mr. Justice Muhammad Iqbal Kalhoro has the requisite time to undertake this important assignment. The Commission may document, photograph and video record the prevailing state of affairs and the improvements brought thereto in a systematic manner. Any expense borne by the Commission to undertake the task to it will be borne by the Sindh Government. Since the issues dealt with by the Commission under the orders of this Court pertain to life and health of the common people of Sindh Province, therefore, it is imperative that the power of the Commission be ensured without being impugned by procedural technicalities. Therefore, we hold that any order of the Commission during the hearing of the proceedings before it cannot be appealed before any forum except before this Court and would be binding on all the Provincial and Federal Government departments and/or the agencies under their control unless reversed or reviewed by this Court.

52. Before parting with the order, we must record our appreciation for the hard work undertaken by Mr. Justice Muhammad Iqbal Kalhoro in conducting the proceedings of the Commission and compiling a report.

53. We, looking to the given atmosphere of frequent transfers in the Sindh Government in defiance of the service rules and the judgment of this Court in the case of Syed Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2013 SC 195), are constrained to restrain the Sindh Government from posting out either the Chief Secretary and/or any of the members notified on 16.03.2017 from their office as reflected in the notification without prior approval of this Court unless a member's three years tenural period is complete, as any other intervention by way of transfer by Sindh Government will hamper the functioning of the Task Force to the disadvantage of the objective for which it is constituted.

54. The Task Force shall be directly reporting to the Commission. The Commission would be at liberty to take proceedings in order to

examine improvements in the departments/organizations on the issue of water.

55. Adjourned. To be fixed after four months. The Commission shall submit the report on the aforesaid directives to this Court. Copies of this order shall be sent to the Worthy Speaker of the Sindh Assembly with the C.D in terms of our observations made in paragraph 5 of this order, Chief Secretary, Sindh, Secretaries notified as Members, Advocate General, Sindh and all those officers/experts notified as Members of the Task Force/Committee and the Commission.

MWA/S-9/SC Order accordingly.

Case No:29 Muhammad Ayaz---Petitioner

2017 C L D 772

[Lahore]

Before Ayesha A. Malik, J

MUHAMMAD AYAZ---Petitioner

Versus

GOVERNMENT OF PUNJAB through Chief Secretary and others---Respondents

W.P. No. 1193 of 2017, heard on 1st February, 2017.

Date of hearing: 1st February, 2017.

JUDGMENT

AYESHA A. MALIK, J.---Through this Petition, the Petitioner has impugned order dated 11.1.2017 issued by Respondent No.5 whereby the Deputy Director, Environmental Protection Agency, Punjab, Gujranwala ordered for the sealing of the plant of the Petitioner in order to implement the Environmental Protection Order issued on 6.11.2015.

2. The facts of the case are that the Petitioner runs a business in the name of Ali Steel Works in Allama Iqbal Colony, Street No.2, Gujranwala. The residents of the area filed a complaint against the business of the Petitioner on the ground that it causes air pollution as well as noise pollution and vibration which is hazardous to the environment and to the health of the residents of the area. The District Officer (Environment), Gujranwala inspected the unit of the Petitioner on 14.5.2015 and found that it had been established without obtaining the environment approval from the Environment Protection Agency, Punjab ("EPA") and that the noise pollution exceeded the National Environment Quality Standards ("NEQS") limits. The Petitioner was issued Environmental Protection Order ("EPO") on 6.11.2015 under section 16 of the Punjab Environmental Protection Act, 1997 ("Act") after being given two opportunities, one on 11.6.2015 and the other on 22.6.2015 to controvert the allegations raised against him. Since the Petitioner was unable to do so, EPO was issued on 6.11.2015. The EPO stated that the Petitioner should,

"Immediately stop operation of your unit till its regularization from competent forum to ensure compliance of section 12 of Punjab Environmental Protection Act, 1997 (amended 2012).

No appeal was filed against the EPO and the Petitioner continued its business without compliance of the EPO. Thereafter the complainant filed W.P. No.31185/2016 in which a direction was issued on 5.10.2016 that he should avail remedy under section 17 of the Act for compliance of the EPO. In the meanwhile a follow up inspection was carried out and it was found that the Petitioner had not complied with the EPO, hence the Deputy Director, Environmental Protection Agency, Punjab, Gujranwala while invoking the powers under section 6(1)(a) of the Act sealed the unit of the Petitioner on 11.1.2017. Hence this Petition.

3. The basic issue before the Court, as raised by the Petitioner is the power of the Deputy Director, Environmental Protection Agency, Punjab, Gujranwala/Respondent No.5 to pass a sealing order. Learned counsel for the Petitioner argued that Respondent No.5 did not have any power to seal the unit of the Petitioner. The power of sealing lies exclusively with the Environmental Protection Tribunal ("Tribunal") under section 17(5)(c) of the Act. Learned counsel further argued that the order of sealing was done without following due process and without notice to the Petitioner. Learned counsel further submitted that the complainant filed W.P. No.31185/2016 before the Court wherein a direction was issued on 5.10.2016 that he should approach the Tribunal, therefore the act of sealing was in derogation to the said orders of this Court. Learned counsel places reliance on the case titled Messrs Mega Steel Mills Private Limited v. Government of Punjab through Secretary, Environmental Protection Department, Punjab, Lahore and 6 others (2016 CLC 1095) in support of his contentions.

4. Learned Law Officer argued that sufficient notice was given to the Petitioner before issuance of the EPO and the Petitioner was unable to refute the allegations that the noise level exceeded the NEQS limits. Furthermore despite the EPO, the Petitioner made no effort to control the noise and vibration level and continued with his business. Learned Law Officer further argued that the EPO dated 6.11.2015 issued under section 16 of the Act was not complied with and on 11.1.2017 an order was passed in terms of the powers vested with the EPA to seal the unit of the Petitioner. Learned Law Officer argued that the EPA has power to implement its orders under section 16(3) read with section 16(2) of the Act. She argued that when a person does not comply with the order of the EPA, the EPA can initiate action under the Act and can also take necessary measures to ensure that the direction given in the EPO is implemented. In this case an immediate stop order was passed on 6.11.2015, subsequent inspections were carried out and it was seen that the Petitioner was not compliant with the EPO. Sufficient warnings were given to him, opportunity of hearing was provided and ultimately in order to prevent the continuation of the environmental hazardous, sealing order was issued on 11.1.2017. Learned Law Officer has placed reliance on the case titled Ms. Imrana Tiwana and others v. Province of Punjab and others (2015 CLD 983) to urge the point that right of appeal is provided for under

the Act and remedy of a second appeal is also available before a Division Bench of this Court. However, the Petitioner has failed to avail the said remedy provided for under the Act, hence the instant Petition is not maintainable.

5. Arguments heard and record perused.

6. On the issue of maintainability the question before the Court is with reference to the power exercised by the EPA under section 16 of the Act. Learned Law Officer further argued that since the remedy of appeal is available to the Petitioner, the instant Petition is not maintainable. However given that the question involved relates to interpretation of section 16 and the powers of the EPA versus power of the tribunal to enforce the EPO, the remedy of appeal is not efficacious. Hence the instant Petition is maintainable.

7. The basic question raised in this Petition is whether the EPA has the power to seal a unit which is not compliant with the EPO. Section 5 of the Act authorizes the Director General to carry out all powers and functions of the EPA and section 5(5) of the Act allows the Director General to delegate any of his powers. By way of Notification No. 176/F-02/LS dated 21.08.2007 and 503/F-02(VII)/LS/EPA dated 27.02.2008, the powers and functions under the EPA were delegated by the Director General with respect to the different provisions of the Act. The Notification mentioned above delegates powers to the Deputy Directors in matters pertaining to section 16 of the Act. Section 16 of the Act being the relevant provision is reproduced hereunder:-

Environmental protection order. (1) Where the Provincial Agency is satisfied that the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substance, or any other act or omission is likely to occur, or is occurring, or has occurred, in violation of any provisions of this Act, rules or regulations or of the conditions of a licence, or is likely to cause, or is causing, or has caused an adverse environmental effect, the Provincial Agency may, after giving the person responsible for such discharge, emission, disposal, handling, act or omission an opportunity of being heard, by order direct such person to take such measures as the Provincial Agency may consider necessary within such period as may be specified in the order.

(2) In particular and without prejudice to the generality of the foregoing power, such measures may include-

(a) immediate stoppage, preventing, lessening or controlling the discharge, emission, disposal, handling, act or omission, or to minimize or remedy the adverse environmental effect;

(b) installation, replacement or alteration of any equipment or thing to eliminate or control or abate on a permanent or temporary basis, such discharge, emission, disposal, handling, act or omission;

(c) action to remove or otherwise dispose of the effluent, waste, air pollutant, noise, or hazardous substances; and

(d) action to restore the environment to the condition existing prior to such discharge, disposal, handling, act or omission, or as close to such conditions may be reasonable in the circumstances, to the satisfaction of the Provincial Agency.

(3) Where the person, to whom directions under subsection (1) are given, does not comply therewith, the Provincial Agency may, in addition to the proceedings initiated against him under this Act or the rules and regulations, itself take or cause to be taken such measures specified in the order as it may deem necessary and may recover the costs of taking such measures from such person as arrears of land revenue.

8. Section 16 of the Act governs the procedure and powers related to an EPO. An EPO is a written order that is designed to protect the environment. It is issued to secure compliance by a person who is causing harm to the environment in order to protect human health and the environment. It specifies the sensation of the harm and provides for the methods to cure or stop/prevent the harm within a given time frame. Essentially the EPO provides the action that needs to be taken and the timeframe during which it must be taken, to rectify the wrong. In terms of section 16(1) of the Act, the EPA has to satisfy itself that there is discharge or emission of any waste or pollutant or noise in violation of the Act. Once satisfied it must give an opportunity of hearing to the person causing the pollution and can then pass an order directing the person to take necessary measures to cure the problem. However, the EPO can also direct measures requiring immediate action. The measures under section 16(2) of the Act require instant or emergent action, such as immediate stoppage or immediate control of the equipment or thing causing the pollution or removal or disposal of the hazardous or pollutant substance or action that helps to restore the environment to the condition it was in before the pollutant. While the EPO under section 16(1) of the Act provides for remedial or corrective measures to cure pollution or stop further pollution; Section 16(2) of the Act lays down preventative measures that require immediate action for an immediate effect. Therefore the distinction between section 16(1) and (2) is essentially that the latter acknowledges the need for immediate action as a necessary response mechanism to imminent threat or irreparable damage to the environment.

9. The vital question is whether the EPA can enforce its orders under the EPO where a person fails to comply with the measures prescribed by the EPA. In terms of section 16(3) of the Act, the EPA can either proceed against the person under the Act which could mean proceeding under section 17 of the Act to impose penalties or proceeding under section 21 of the Act where it can file a complaint against the person disobeying the EPO or it can itself take or cause to be taken such measures necessary in the order to implement its EPO. Therefore section 16(3) of the Act itself provides for an

enforcement mechanism which is in addition to remedy under the Act. The mandate of the law under Section 16(3) of the Act is very clear. An EPO can be passed to prevent any form of pollution be it air, water, noise or waste or handling of hazardous substance. Section 16(3) of the Act is an enabling provision to ensure compliance with orders under section 16(1) and (2) of the Act, enabling immediate action by the EPA to enforce orders where necessary. The need to provide for enforcement powers in the EPA is essential given that immediate measures may be required to prevent environment degradation. The purpose and overarching objective of the Act to protect the environment and promote sustainable development would be rendered redundant if such powers did not exist.

10. The spirit of section 16 of the Act is based on the Precautionary Principle. The Precautionary Principle requires the relevant agency to anticipate the danger and take immediate steps to prevent harm or danger to the environment. The Rio Declaration and Agenda 21 in 1992 adopted the Precautionary Principle as a necessary mechanism in the following terms:

to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environment degradation. (Article 15, Rio Declaration)

Essentially, the Precautionary Principle is a tool for ensuring sustainable development. The court in M.C. Mehta v. Union of India Court (1997 (2) SCC 353: AIR 1997 SC 734) affirmed that, "The Precautionary Principle" and "The Polluter Pays Principle" are necessary tools for sustainable development. The court elaborated on this, holding that:

If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

The Precautionary Principle was further recognized by the G8 Ministers in 2002 as a means to safeguard the protection of the environment. Therefore the Precautionary Principle focuses on empowering regulators to act in anticipation of environmental harm and ensure it does not occur. Pakistan's commitment to uphold sustainable development and the Precautionary Principle was affirmed through ratification of the Rio Declaration (ratified 01-06-1994) and several other international instruments (United Nations Framework Convention on Climate Change (ratified 01-06-1994),

The Biodiversity Convention (ratified 01-06-1994), etc). The Bhurban Declaration 2002 further emphasized the need to take immediate action and employ the Precautionary Principle to protect life and nature for present and future generations.

11. Since the Ms. Shehla Zia and others v. WAPDA case (PLD 1994 SC 693), superior courts have taken an active approach in accepting environmental justice and recognized the Precautionary Principle as an integral issue. In the cited case the court held that:

The rule of precautionary policy is to first consider the welfare and safety of the human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safety. To stick to a particular plan on the basis of old studies or inconclusive research cannot be said to be a policy of prudence and precaution.

Following this, several cases have acknowledged the Precautionary Principle and its importance as an enforcement mechanism for protection of the environment and sustainable development. The Supreme Court in Adeel-ur-Rehman v Federation of Pakistan held that:

It is the duty of the State to see that the life of a person is protected as to enable him to enjoy it within the prescribed limits of law. Pollution, environmental degradation and impure food items also fall in the category of deprivation of life. [2005 PTD 172]

In Imrana Tiwana v. Province of Punjab (2015 CLD 983), the court took this further and established environmental justice as a concept that fell within the scheme of the Constitution,

To us environmental justice is an amalgam of the constitutional principles of democracy, equality, social, economic and political justice guaranteed under our Objectives Resolution, the fundamental right to life, liberty and human dignity (Article 14) which include the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Right to environment that is not harmful to the health or well-being of the people and an environment that protects the present and future generations is an essential part of political and social justice and even more integral to the right to life and dignity under our Constitution.

In Ali Steel Industry v. Government of Khyber Pakhtunkhwa and another (2016 CLD 569) the need to use precautionary and preventative measures to ensure the protection of rights under Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973 was reaffirmed. The court found no illegality with respect to the sealing of the premises or the direction of stoppage to the petitioner even though the Khyber Pakhtunkhwa Environmental

Protection Act, 2014 did not extend to PATA. The court stressed on the duty to combat environmental degradation, again pointing towards the need for immediate enforcement mechanisms.

12. Therefore it is clear that the state and its officers must employ measures to achieve environmental justice and preserve the environment. With the growth of jurisprudence on the establishment of environmental justice in Pakistan, it is necessary to now shift the focus on enforcement mechanism especially where certain kinds of harm or pollution which require immediate stoppage, must be stopped. The Act emphasizes on immediate measures empowering the EPA to protect the environment where there is imminent threat to the public or cause to believe environmental degradation/pollution will be irreversible. In such cases, the enforcement mechanism must act immediately to effectively control the harm and prevent any further degradation without this power of enforcement the issuance of an EPO under section 16(2) of the Act specifically would become redundant. If the EPO requires immediate stoppage or immediate removal of the pollutant then allowing the harm and pollution to continue would defeat the purpose of section 16(2) of the Act.

13. Another aspect of the case is the argument that due process was not followed. In this case notices were issued but since he did not appear, no hearing was given prior to the sealing of the unit. While due process and the right to a fair trial are embedded in Article 10A of the Constitution of Islamic Republic of Pakistan, 1973, the objective of the constitutional protection is to achieve justice. In cases of strict liability, where damage to the environment is irreversible and permanent, immediate action is fortified in order to prevent irreparable damage. In such cases it is necessary to take precautionary measures, which do not immolate or infringe the right to fair trial or due process, but simply ensure that a harm or hazard does not continue during the time spent in due process. The august Supreme Court of Pakistan held in the case titled Warid Telecom (Pvt.) Limited v. Pakistan Telecommunication Authority (2015 SCMR 338) that where actions are taken to stop more injustice from happening then such actions should not be seen as a violation of the right to fair trial or due process. In this case the august Supreme Court of Pakistan quotes Karnataka Public Service Commission v. B.M. Vijaya Shankar (AIR 1992 SC 952):

When meeting the requirement of notice and providing an opportunity of hearing will cause "more injustice than justice" or it is not in the "public interest" the same may be withheld.

Was natural justice violated? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed; since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as

decisions on merits yet urgency of the matter, or public interest at times require, flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules.

The Petitioner's contention that the right to due process and Article 10A of the Constitution of Islamic Republic of Pakistan, 1973 was violated is not sustainable because public safety, public health and the environment must be protected from irreparable harm. In this case, the issue of noise pollution and vibrations were exceeding the NEQS, hence it required immediate action to secure public health and safety especially since the Petitioner had totally failed to rectify the cause of the harm in any manner whatsoever. Thus, there is no violation of Article 10A of the Constitution of Islamic Republic of Pakistan, 1973.

14. In this case the EPA acted strictly in accordance with law. In fact it complied with the requirement of due process and gave the Petitioner sufficient time to comply with the EPO dated 6.11.2015. However, not only was the Petitioner unable to provide any mechanism to control the noise pollution but he blatantly and flagrantly disobeyed the EPO and once action was taken against him, he challenged the legality of the order. More than one year lapsed after the issuance of the EPO yet on successive inspections of the unit it was noted that no effort was made by the Petitioner to rectify the noise pollution or the vibration, nor did Petitioner attempt to comply with the EPO. The argument of the learned counsel that the power of sealing lies only with the Tribunal and that the EPA was required to file a complaint under section 21 of the Act is totally misconceived. Section 21(7) of the Act provides that an application can be filed by any officer authorized by the Director General of the EPA if there is reasonable suspicion of his having been involved in contravention punishable under section 17(1) of the Act which was available to the EPA in addition to the power it has to execute the measures provided in section 16(2) of the Act. In the event that there is non-compliance of section 16(2) of the Act, section 16(3) enables the EPA to, itself take the measures that are prescribed in the EPO. The use of the words itself take or cause to be taken in section 16(3) of the Act are for the benefit of the environment and empowers the EPA to enforce its orders in order to stop pollution which causes imminent danger to the people and the locality.

15. Learned counsel for the Petitioner has also placed reliance on the case cited at 2016 CLC 1095 (supra) wherein it was held that the department did not have the power to seal the property. The said case is distinguishable on the facts. In this case an order was passed by the Tribunal with regard to the pollution caused by the factory of the appellant. The appellant filed an appeal before the EPA which was first dismissed and then subsequently restored. However, during the process of restoration the officials of EPA sealed the

factory of the appellant for non-compliance of the EIA. The issue in that case was with reference to the sealing carried out under Regulation 20 of the Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000 whereas in the instant case the unit was sealed for non-compliance of the EPO. Therefore the case is distinguishable and not applicable to the facts of this case.

16. Under the circumstances, no case for interference is made out. Petition is dismissed.

KMZ/M-29/L Petition dismissed.

Case No:30 Abdul Ghani

2016 C L D 1400

[Sindh Environmental Protection Tribunal]

Before Justice (R) Nisar Muhammad Shaikh, Chairman, Mushtaq Ali Memon, Member Technical and Muhammad Arif Khan, Member Legal

ABDUL GHANI and others---Complainants

Versus

RAIWIND CHEMICAL (PVT.) LTD.---Respondent

Complaint No. 2 of 2012, decided on 25th February, 2016.

Date of hearing: 25th February, 2016.

ORDER

MUHAMMAD ARIF KHAN, MEMBER LEGAL.---This order will dispose of the Application under section 21(3) of the Pakistan Environmental Protection Act, 1997, read with section 26(3) of the Sindh Environmental Protection Act, 2014 read with Article 175(2) of the Constitution of the Islamic Republic of Pakistan and Application under section 265-K of the Code of Criminal Procedure filed on behalf of the Respondent Raiwind Chemical (Pvt.) Ltd. and Application for Withdrawal of Complaint filed by the Complainant No.1.

2. This Tribunal had received this complaint along with letter No.851/MIT-II/PSA-2479/2011 dated 23rd April 2011 from the office of Member Inspection Team-II of the Honorable High Court of Sindh, Karachi. The Application/Complaint was addressed to the Honorable Chief Justice of Pakistan and copies of it were also sent to Honorable Chief Justice of Sindh and others. The Application/Complaint was moved by the Complainants namely Abdul Ghani, Iqbal, Ameen, Waseem and Daulat.

3. The brief facts of the Application/Complaint, which was authored by Complainant No. 1 Abdul Ghani, are that the Applicant/Complainant resides in village Mue Khan Baloch, U/C Ghaghar situated in Bin Qasim Town, Karachi. He claims that he is a social worker and that their village faces a major problem from the companies namely ICI, Engro Chemicals, Bak Gas, Fauji Foundation, several other textile mills and approximately 500 other factories which leave their waste chemicals and hazardous material and create all sorts of pollution in the area which is dangerous to human health. He claims that at the time of construction of these factories, objection was raised by the complainants/residents of the

village that these factories would negatively impact the health of the people in the locality. He claims that they were given assurances that if any of the residents of the 27 villages in the area is affected, something would be done about it. He also claims that they were also given assurances that all the inhabitants of the villages would be provided jobs in the factories. The complainant claims that neither the promised jobs were provided nor any steps were taken for the betterment of their health. The complainant further alleges that they were deprived of their ancestral lands. He also alleges that the promises were not fulfilled and that people of the villages are being affected by the pollution.

4. On 26th April, 2011, this complaint was presented before the Honourable Chairman of the then Environmental Protection Tribunal, Karachi, constituted under the Pakistan Environmental Protection Act, 1997. The Honourable Chairman directed that notices be issued to the applicants/Complainants for 5th May, 2011. On 5th May, 2011 three complainants, namely Abdul Ghani, Iqbal and Ameen were present in person and informed the Tribunal that Complainants Nos.4 and 5 were out of the city. They filed Memo of Appearance, which was put on record. They were directed to submit the list of the Companies which are polluting the environment in and around U/C Ghaghar, Bin Qasim Town, along with the complete addresses and names of the CEO/Owner within 3 days. The Sindh Environmental Protection Agency was directed to conduct investigation in respect of the factories mentioned in the list provided by the complainant and submit a comprehensive report.

5. After seeking several extensions, the Sindh Environmental Protection Agency (hereinafter referred to as the Agency) on 18th August, 2011 finally submitted the interim investigation report in respect of (i) M/s. Proctor and Gamble Pakistan Ltd., (ii) M/s. Exide Pakistan Ltd., (iii) M/s. Raiwind Chemical (Pvt.) Ltd., (iv) M/s. Lotte Pakistan Ltd. (ICI), (v) M/s. Fuji Fertilizer Ltd. (vi) M/s. Wali Oil Mills Ltd., (vii) M/s. Engro Zarkhaiz Plant and (viii) M/s. British Oxygen Ltd. On 20th June, 2011 the learned DDPP appearing for the Agency filed Application for the issuance of Search Warrants against M/s. Exide Pakistan Ltd., and M/s. Wali Mills as they allegedly had not allowed the officials of the Agency to access their premises. On 28th June, 2011 the Tribunal issued notices to M/s. Exide Pakistan Ltd., and M/s. Wali Oil Mills on the application of the Agency for the issuance of Search Warrants against these factories. The Agency was directed to submit all necessary details including date and time of visit, and name of person who refused to allow the Agency to investigate. After repeated notices on 14th July, 2011 Mr. Tariq Javed, Plant Manager, Excide Pakistan Ltd., and Mr. Ghulam Shabbir, Admin Manager, Wali Oil Mills appeared before the Tribunal on behalf of the Respondents. On 26th July, 2011 the Respondents made statement that they are ready to co-operate and allow access to the Agency for investigation, and requested that search warrants may not be issued against them. The request of the Respondents was allowed by Tribunal. On 18th August, 2011 the

Assistant Director of the Agency through the learned DDPP submitted interim investigation reports in respect of M/s. Procter and Gamble Pakistan Ltd., M/s. Exide Pakistan Ltd., M/s. Raiwind Chemicals (Pvt.) Ltd., M/s. Lotte Pakistan Ltd. (ICI), M/s. Fauji Fertilizers Ltd., M/s. Wali Oil Mills, M/s. Engro Zarkhaiz Plant and M/s. British Oxygen Ltd., which were kept on record for further proceedings. On 25th August, 2011 and 24th September, 2011, the complainants filed applications for deleting the names of M/s. Wali Oil Mills Ltd. and M/s. Exide Pakistan (Pvt.) Ltd., respectively. On 24th September, 2011, the Agency through the learned DDPP submitted another interim investigation reports in respect of all the above named companies. On 12th October, 2011, the Assistant Director of the Agency, through the learned DDPP submitted another interim investigation report in respect of M/s. British Oxygen Ltd., M/s. Raiwind Chemicals (Pvt.) Ltd., M/s. Engro Zarkhaiz Plant and M/s. Lotte Pakistan Ltd. (ICI) which was kept on record. The learned counsel for the Complainant submitted photocopies of newspaper clippings which were also taken on record. On 28th November, 2011, the Assistant Director of the Agency was directed to submit comprehensive reports in respect of M/s. Exide Pakistan Ltd., and M/s. Wali Oil Mills. On 20th December, 2011 the Assistant Director of the Agency through the learned DDPP submitted interim investigation reports in respect of M/s. Procter and Gamble Pakistan Ltd., M/s. Exide Pakistan Ltd., M/s. Raiwind Chemicals (Pvt.) Ltd., M/s. Lotte Pakistan Ltd. (ICI), M/s. Fauji Fertilizers Ltd., M/s. Wali Oil Mills, M/s. Engro Zarkhaiz Plant and M/s. British Oxygen Ltd., which were kept on record for further proceedings. The statement of the Complainant No.1 was recorded by the Tribunal under section 200 of the Code of Criminal Procedure. On 11th January, 2012, the Assistant Director of the Agency through the learned DDPP submitted report in respect of M/s. Exide Pakistan Ltd., and M/s. Wali Oil Mills which was kept on record. The said report revealed that their parameters were not exceeding the limits imposed by the National Environmental Quality control Standards. Order was passed on Applications dated 25th August, 2011 and 24th September, 2011 and the Complainant's application for the deletion of their names was allowed. The Assistant Director of the Agency was directed to submit final investigation-report regarding the remaining factories.

6. On 14th June, 2012 the Complainant filed list of witnesses and an amended list of companies which were allegedly polluting the environment. As per order dated 14th June, 2012, the Registrar was directed to register cases against M/s. Raiwind Chemicals and M/s. Engro Fertilizers, assign separate complaint number and issue summons to the CEOs of these companies. Notice was directed to be issued to CEO of Fauji Fertilizers Ltd. On 3rd August, 2012 the Respondents were provided copies of the complaint and the statement recorded by the Tribunal under section 200 of the Code of Criminal Procedure. On 30th October, 2015 this case, along with other cases, had been received by this Tribunal through the Ex-Registrar of the devolved Environmental Protection Tribunal

established under the Federal Law vide letter issued by the Federal Ministry of Law, Justice and Human Rights dated 9th July, 2015 in pursuance of the process of devolution under the 18th Amendment to the Constitution of the Islamic Republic of Pakistan. On 14th January, 2016, the Respondents in this case filed an Application under section 265-K of the Code of Criminal Procedure and it was heard on 27th January, 2016 during the hearing Complainant No.1 submitted an Application for withdrawal of the complaint, stating that he has no complaint against the Respondent at this point in time.

7. The learned counsel for the Respondents submitted that this Tribunal has no jurisdiction under section 21(3) of the Pakistan Environmental Protection Act, 1997 or section 26(3) of the Sindh Environmental Protection Act, 2014 and it could not take cognizance on a direct complaint as the Complainant has not given a notice of 30 days which expresses and intention to file a complaint before the Tribunal under these sections. According to him, it is a mandatory requirement of law but the same was not fulfilled by the Complainant. He also submitted that the village of the Complainant is 11.3 km away from the Respondent factory, and that the wind blows from the village of the Complainant to the Respondent factory, and not vice versa, and water flows from the village to the industrial estate hence there is no question of atmospheric or water pollution. He further submitted that no summons were issued, only notices were issued, hence no cognizance was taken. He also submits that section 200 of the Code of Criminal Procedure requires that statement of the Complainant be recorded at once whereas in this case the statement of the Complainant was recorded after eight months. The learned counsel for the Respondent further submitted that there is a glaring contradiction in the contents of the complaint and the statement of the Complainant recorded under section 200 of the Code of Criminal Procedure in respect of the death toll of people and animals, which is quite different in both the statements. This fact creates a serious doubt in the mind of a prudent man regarding the authenticity of the contents of the complaint. The learned counsel for the Respondent also submitted that the Complainant did not file a single death certificate or any FIR to establish their claim regarding the death of any person or any animal due to the pollution. He also submitted that without documentary evidence the statement of the Complainant cannot be considered as a gospel truth. The learned counsel also submitted that this Tribunal under Article 175(2) of the Constitution of the Islamic Republic of Pakistan has no jurisdiction to proceed in this matter. The learned Assistant District Public Prosecutor, assisting the agency, contended that under the provision of 265-K of the Code of Criminal Procedure the Tribunal can only exercise its powers if the charges are groundless or there is no probability of conviction, whereas in the present case the learned counsel for the Respondents has only raised some technical issues therefore the application is not maintainable under the law. He also submitted that the inquiry report of the Agency is on record which clearly establishes that the Respondent factory

exceeds the NEQS and in such circumstances the application is liable to be dismissed while the Complainant No. 1 has categorically stated that he has no more interest in pursuing the case and has no more complaint against the Respondents at this point in time.

8. We have considered the contentions raised by the learned counsel and the parties including the Complainant and perused the case record which reveals that the present complaint was received from the Honorable High Court of Sindh for necessary action in accordance with the law. In order to ascertain the truth, after receipt of the complaint on 23rd April, 2011, notices were ordered to be issued to the Complainant and simultaneously through the learned DDPP, the Agency was directed to probe into the matter, conduct detailed enquiry and to submit the report. The Agency submitted a number of interim reports before the Tribunal and the statement of Complainant No. 1 under section 200 of the Code of Criminal Procedure was recorded after about eight months of the receipt of the complaint from the Honorable High Court of Sindh. Case was registered after the statement of the Complainant No.1 was recorded. The Registrar was directed to register cases against M/s. Raiwind Chemicals and others separately. It is also pertinent to mention that the team of the Agency visited the Respondent factory and as per the chemical analysis report dated 17th April, 2014, COD, phenolic compounds and nickel were exceeding NEQS limit.

9. In our view, if the Tribunal order for investigation under section 156(3) of the Cr.P.C. or issues search warrants for the purpose of the investigation, it cannot be said to have taken cognizance of the alleged offence. Issuance of search warrants for the purpose of investigation or directing the Investigating Agency to ascertain the truth of the complaint cannot by itself be regarded as an act of taking cognizance of an alleged offence. To take cognizance of an offence is not the same as issuing of process. The Tribunal may be said to have taken cognizance of a complaint if after receiving a complaint from the Agency or an aggrieved person, the Tribunal records the statement under section 200 of the Cr.P.C., applies its mind to the facts in the statement and proceeds to order the registering of a case against the accused. The Tribunal had only directed the application/complaint to the Agency for the purpose of ascertaining the truth, no summons, were issued on the complaint, and thus the Tribunal adopted the proper course in this complaint by not taking cognizance of the complaint at the earliest, before getting the enquiry/investigation conducted.

10. The factory of the respondent was visited by the authorized team of the Agency and collected waste water samples for laboratory analysis in the presence of witnesses. On the basis of the results it was allegedly found that some parameters of the waste water were exceeding the permissible limits of the National Environmental Quality Standards, in contravention of section 11 of the Pakistan Environmental Protection Act, 1997. The Agency had afforded multiple opportunities for personal hearing under section 16(1) of the Pakistan Environmental Protection Act, 1997 and an

Environmental Protection Order was issued on 28th October, 2011 and thereafter repeated chances were given to the Respondents for compliance on their requests. The maximum time given to the Respondents for compliance lapsed and final notice dated 14th January, 2012 was issued by the Agency for compliance with the Environmental Protection Order.

11. The Agency submitted its reports regarding non-compliance of the Environmental Protection Order by the Respondents and then the Tribunal proceeded to take cognizance and ordered the registration of cases against the Respondents after recording the statement of the Complainant under section 200 of the Cr.P.C.

12. The lab report and the report of investigating officer indicate that the limits imposed by the National Environmental Quality Standards are being exceeded and the Respondents have failed to comply with the Environmental Protection Order after repeated opportunities afforded to them, as alleged by the Agency.

13. The plain reading of section 11 of the Pakistan Environmental Protection Act, 1997 conspicuously imposes two obligations on everyone, firstly the National Environmental Quality Standards (NEQS) should not be violated, and secondly the standard established under section 6(1)(a)(i) must be maintained.

14. Since the limits imposed by the National Environmental Quality Standards are being exceeded and the alleged violation continues, therefore the grounds for allowing an application under section 265 K, Cr.P.C. are not being met and therefore the application under section 265-K, Cr.P.C. and the application under section 21(3)(b) of the Pakistan Environmental Protection Act, 1997 and section 26(3)(b) of the Sindh Environmental Protection Act, 2014 read with Article 175(2) of the Constitution of Pakistan deserve no merit at this stage because we are of the considered view that the present matter requires evidence therefore these applications being premature at this stage are hereby dismissed. The Respondent, if so advised, shall be at liberty to file such an application at an appropriate stage after some evidence is brought on record.

15. The Application for withdrawal of the Complaint filed by Complainant No.1 is not maintainable especially when the remaining four complainants have not joined in, in the withdrawal application. The same is also dismissed. It is pertinent to mention that this case is not limited to the complainants, as the alleged violation of the National Environmental Quality Standards continues to affect the environment and the public at large. All this needs determination after due trial of the case.

16. In this regard we would like to place reliance upon the case of Shehla Zia v. WAPDA (PLD 1994 SC 693), whereby the Honourable Supreme Court has held that the Right to life enshrined in the Constitution includes the Right to an Unpolluted Environment.

17. It is made clear that any observation made in this order being tentative in nature is only for the limited purpose of deciding the

present three applications and shall not be construed as an expression of opinion on the merits of this case.

Announced and given under our hand and seal of this Tribunal on the 25th day of February, 2016.

SL/1/SET Applications dismissed.

Case 31: Ali Steel Industry

2016 C L D 569

[Peshawar]

Before Nisar Hussain Khan and Muhammad Daud Khan, JJ

ALI STEEL INDUSTRY through Proprietor---Petitioner

Versus

GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and another---Respondents

Writ Petition No. 2744-P of 2015 along with C.M. No. 1149-P of 2015, decided on 10th September, 2015.

(a) Khyber Pakhtunkhwa Environmental Protection Act (XXXVIII of 2014)---

----Ss. 17, 18(1) & Preamble----Constitution of Pakistan, Arts. 2-A, 9, 14, 199(1)(c) & 247---Environmental Protection Order---Penalties---Administration of Tribal Areas---Security of person---Inviolability of dignity of man etc.---Environmental Protection Agency served notice under S. 17 of Khyber Pakhtunkhwa Environmental Protection Act, 2014 upon the petitioner and directed him to stop all activities of his Mill immediately---Petitioner challenged the vires of the impugned order on ground that Khyber Pakhtunkhwa Environmental Protection Act, 2014 had not been extended to Provincially Administered Tribal Areas (PATA)---Validity---Petitioner's mill was situated in PATA, and, under Art. 247 of the Constitution, Environmental Protection Act, 2014 had not been extended to PATA, however the break or further non-extension of the environmental laws did not grant licence to any person to threaten the health or life of the locales by his actions/activities---Present case was not only in between the petitioner and the Agency, but the locales of the vicinity had also filed several complaints in that regard---Petitioner's mill was situated in a thickly populated area---Location of the mill showed that public's basic rights were also involved, which was a feature of the environmental assessment---High Court, in exercise of its jurisdiction under Art. 199(1)(c) of Constitution, might grant relief to the extent of stopping the functioning of factories, which created pollution and environmental degradation---Article 9 of the Constitution ensured safety against any attack or danger or apprehension on life of a person---Likelihood of any hazard to life by air pollution that was dangerous to human health and surrounding environment could not be ignored---Constitutional petition was dismissed in circumstances.

Mst. Shehla Zia v. WAPDA PLD 1994 SC 693; M.C. Mehta v. Union of India AIR 1988 SC 1115 and M.C. Mehta v. Union of India AIR 1988 SC 1037 ref.

(b) Constitution of Pakistan---

----Arts. 2-A, 9 & 14---Khyber Pakhtunkhwa Environmental Protection Act (XXXVIII of 2014), Preamble---Security of person---Inviolability of dignity of man etc.---'Right to life', meaning of---Environment right/environmental justice---Scope---Protection of environment is an inalienable right and perhaps more fundamental than the other rights, and the same emerges from the right to life, liberty and dignity under Arts. 9 & 14 of the Constitution---Right to life as enshrined under Art. 9 of the Constitution means a right to a healthier and cleaner environment---Environmental justice is an amalgam of the constitutional principles of democracy, equality, social, economic and political justice guaranteed under the Objectives Resolution, the fundamental right to life, liberty and human dignity given under Art. 14 of the Constitution includes the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine.

Mst. Shehla Zia v. WAPDA PLD 1994 SC 693 ref.

(c) Words and phrases---

----'Life'----Meaning and scope---Word 'life' under the American Constitution mentioned.

Oxford Dictionary and Black's Law Dictionary ref.

Shumail Ahmad Butt and Abdul Rahim Khan Jadoon for Petitioner.

Rab Nawaz Khan, A.A.-G. for Respondents.

Date of hearing: 10th September, 2015.

JUDGMENT

MUHAMMAD DAUD KHAN, J.---Through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner, Ali Steel Industry, situated at Dargai, Malakand Agency, falling within the territorial jurisdiction of Provincial Administered Tribal Area (PATA) is engaged in processing of raw materials of iron/scrape and uses transformer of 3500KV for steel furnace. Once the said transformer exploded due to explosive materials in the furnace and causalities of workers occurred, besides that some residents of the vicinity also raised several apprehensions in their complaints against the petitioner, stated therein that the Mill being situated in residential area is polluting the environment which may create threats to human health and life.

2. The nutshell of petitioner's case is that on 24-06-2015 the petitioner was served with a notice by respondent # 2 under section 17 of the Khyber Pakhtunkhwa Environmental Protection Act, 2014 (hereinafter referred to as Environmental Protection Act, 2014) and finally directing him to stop immediately all activities vide

letter/notice dated 13-07-2015. For convenience letter/notice dated 13-07-2015 is reproduced herein below:

"Whereas a complaint received to this agency from the resident of Village Kharkai, Dargai District Malakand, an official of this Agency visited your unit and it was observed during the site visit that pollution control system has not been installed which creates air pollution that is dangerous to human health and surrounding environment. Moreover you had not obtained Environmental approval from this agency which is mandatory under the law. This act of yours is in violation of the provisions of the Khyber Pakhtunkhwa Environmental Protection Act, 2014.

Whereas you were provided an opportunity of personal hearing on 07-07-2015 in the office of undersigned that was attended by Manager of your Steel Mill and agreed with the problems and directives of this agency to be followed within a stipulated time.

Now in exercise of power under section 17 of KPEPA, 2014, I hereby pass this Environmental Protection Order directing you to:

"**Stop immediately all activities at your Steel Mill**"

Failure to comply with this order is an offence punishable by the Environmental Protection Tribunal under section 18(1) of the KPEPA, 2014, the fine of the punishment can extend up to 05 million Pak Rupees."

3. Being aggrieved from the above action and proceedings initiated by respondent # 2, the petitioner filed the instant Writ Petition mainly on the ground that Environmental Protection Act, 2014 is not extended to PATA and the whole proceedings initiated against the petitioner is illegal.

4. Comments were called from the respondent # 2 which were received wherein respondent # 2 in para (d) admitted that the Act ibid is not extended to PATA and that the same is in process to be extended soon, however Pakistan Environmental Protection Act, 1997 was extended to PATA.

5. Arguments heard and record perused.

6. Learned counsel for the petitioner contended that by entering the anonymous complaints, the act of respondents # 2 is illegal and unjustified. He further contended that the whole proceedings initiated against the petitioner are liable to be quashed because the Mill is situated in the area which falls within PATA and Environmental Protection Act, 2014 is not extended to the said area under Article 247 of the Constitution.

7. Conversely, the learned Additional Advocate General contended that the respondent, who is Environmental Protection Agency, has rightly issued notice to the petitioner and initiated the proceedings against the petitioner. He argued that after site visit by a responsible

official, respondent # 2 has rightly issued order regarding stoppage of Mill. He further contended that though the amended Act i.e. Khyber Pakhtunkhwa Environmental Protection Act, 2014 is not extended to PATA and due process for the extension is in progress and further added that the Pakistan Environmental Protection Act, 1997 was extended to PATA which also contains the same penal section as in Environmental Protection Act, 2014.

8. The main contention of the petitioner is that the punitive action taken by the respondent is violation of Article 247 of the Constitution of the Islamic Republic of Pakistan because the Environmental Protection Act, 2014 cannot be applied to the area which falls in PATA unless the Governer with the approval of the President extend it as ordained in Article 247(3) of the Constitution. For the sake of convenience Article 247 of the Constitution is reproduced herein below:

"247. Administration of Tribal Areas.

---(3) No Act of [Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of [Majlis-e-Shoora (Parliament)] or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situated, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction.

(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of [Majlis-e-Shoora (Parliament)], and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good government of a Provincially Administered Tribal Area or any part thereof, situated in the Province.---"

Though the petitioner/Mill is situated in Dargai, Malakand which falls in PATA and the newly amended Environmental Protection Act of 2014 is not extended to PATA under the ibid Article which assertion of petitioner has also been admitted by respondent # 2. It is true that the Environmental Protection Act, 2014 is not extended in the area and after the nullity of previous Act of 1997, the break or further non-extension of Environmental Laws, doesn't grant any license to any person to threaten the health or life of the locales by one's actions/activities. The matter in hand is not only in-between the petitioner and the Environmental Protection Agency but the locals of the vicinity have also filed several complaints in this regard.

9. Now a question arises that whether the Mill in question creates air pollution that is hazardous to human life and surrounding environment?

It will suffice to observe that as per the visit report dated 19-08-2015 of the learned Assistant Director EPA Regional Office Swat, the petitioner/Mill is situated in a thickly populated area. Boundaries of the petitioner/Mill as per the above report are:

East: House
West: House
South: Water Canal, Children Medical Centre
North: Residential area, Girls High School, Madrasah, Primary School and BHU

The location of the Mill clarify that public basic rights are also involved which involvement is a feature of environmental assessment and can lead to better and more acceptable decision-making. It can be time consuming and demanding, yet without it, proposals are seldom soundly based, and there is likelihood of antagonism from affected people. Public involvement, undertook in a positive manner and supported by a real desire to use the information gained to improve the proposal, will lead to better outcomes. Right to environment that was not harmful to the health or well-being of the people and an environment that protects the present and future generations is an essential part of the political and social justice and even more integral to the right to life and dignity under our Constitution of Islamic Republic of Pakistan. Purpose of the Environmental Laws is to protect, conserve, rehabilitate and improve the environment for the prevention and control of pollution and promotion of sustainable development i.e. not only noise but air pollution and other factors disturbing the ecosystem or the health of the citizen, are the major aim of said laws.

No doubt, the inhabitants of the area are the citizens of the State and their fundamental rights have been guaranteed by the Constitution. In the matter in hand, apprehension of the residents of the area is involved, who are citizen of Pakistan and having the same fundamental rights as envisaged in the Constitution.

10. The security of person is provided under Article 9 of the Constitution, which reads as under:

"9. No person shall be deprived of life or liberty save in accordance with law. "

The ibid Article of the Constitution ensures safety against any attack or danger or apprehension on life of a person subject to law. All the judges and jurists in different ages and from different jurisdiction have agreed upon the definition of word "life" protected and assured by various constitutions. "Life" meant right to live with dignity and

honour with proper healthcare. The word "life" is very significant as it covers all facts of human existence. Though the word "life" has not been defined in the Constitution but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person is entitled to enjoy in a State.

According to Oxford dictionary, 'life' meant state of all functional activity and continual change peculiar to organised matter and specially to the portion of it constituting an animal or plant before death and animate existence. In Black's Law Dictionary, 'life' means "that state of animals, humans, and plants or of an organised being, in which its natural functions and motions are performed, or in which its organs are capable of performing their functions in between birth and death. The sum of the forces by which death is resisted ..... "Life" protected by the Federal Constitution includes all personal rights and their enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home and bring up children, freedom of worship, conscience; contract, occupation, speech, assembly and press".

11. The Constitutional Law in America provides an extensive and wide meaning to the word `life' which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law.

12. E.O. Wilson, in his famous book, The Creation writes: "If there is any moral precept shared by people of all beliefs, it is that we owe ourselves and future generations a beautiful, rich and healthful environment. Environment includes air, water, land, all layers of atmosphere, all organic and inorganic matter and living organisms, the ecosystems and ecological relationships, buildings, structures, roads, facilities and works, all social and economic conditions affecting community life. Environment (natural and built) is the overarching habitat and is intrinsic to our survival and integral to our quality of life. Protection of the environment is, therefore, an inalienable right and perhaps more fundamental than the other rights. It emerges from the right to life, liberty and dignity under Articles 9 and 14 of the Constitution.

13. The corpus of environmental laws have a singular purpose of protecting life and nature including the International Environmental Principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra -generational equity and public trust doctrine. Our existing jurisprudence, since the landmark judgment of Honourable Apex Court in case of Mst.

Shehla Zia v. WAPDA reported in PLD 1994 SC 693 rests environmental justice on right to life enshrined under Article 9 to mean a right to a healthier and cleaner environment. Time has come to move on. To us environmental justice is an amalgam of the constitutional principles of democracy, equality, social, economic and political justice guaranteed under our Objectives Resolution, the fundamental right to life, liberty and human dignity given under Article 14 which include the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Environment and its protection has come to take center stage in the scheme of constitutional rights. Right to environment that is not harmful to the health or well being of the people and an environment that protects the present and future generations is an essential part of political and social justice and even more integral to the right to life and dignity under our Constitution.

14. On dilating upon the question whether a person can be said to have dignity of man if his right to life is below proper food, clothing, shelter, education, healthcare, clean atmosphere and unpolluted environment, the apex Court in the said case of Mst. Shehla Zia (Supra), has held that:

"Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word "life" is very significant as it covers all facts of human existence. The word "life" has not been defined in the Constitution but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. A person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbourhood or at a far-off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal by law he it municipal law or the common law."

The apex Court in the above said case has further held that:

"The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right to 'life' under Article 9 and if both are read together, question will, arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. Such questions will arise

for consideration which can be dilated upon in more detail in a proper proceeding involving such specific questions."

15. The Hon'ble apex Court in Mst. Shehla Zia's case (Supra), has expressed their concern over the pollution, which reads as under:

"The concern for protecting environment was first internationally recognised when the declaration of United Nations Conference on the Human Environment was adopted at the Stockholm on 16-6-1972. Thereafter it had taken two decades to create awareness and consensus among the countries when in 1992 Rio Declaration was adopted. Pakistan is a signatory to this declaration. The Rio Declaration is the product of hectic discussion among the leaders of the nations of the world and it was after negotiations between the developed and the developing countries that an almost consensus declaration had been sorted out. Environment is an international problem having no frontiers creating transboundary effects. In this field every nation has to cooperate and contribute and for this reason the Rio Declaration would serve as a great binding force and to create discipline among the nations while dealing with environmental problems. Coming back to the present subject, it would not be out of place to mention that Principle No. 15 envisages rule of precaution and prudence. According to it if there are threats of serious damage, effective measures should be taken to control it and it should not be postponed merely on the ground that scientific research and studies are uncertain and not conclusive. It enshrines the principle that prevention is better than cure. It is a cautious approach to avert a catastrophe at the earliest stage. Pakistan is a developing country. It cannot afford the researches and studies made in developed countries on scientific problems particularly the subject at hand. However, the researches and their conclusions with reference to specific cases are available, the information and knowledge is at hand and we should take benefit out of it. In this background if we consider the problem faced by us in this case, it seems reasonable to take preventive and precautionary measures straightaway instead of maintaining status quo because there is no conclusive fording on the effect of electromagnetic fields on human life. One should not wait for conclusive finding as it may take ages to ford it out and, therefore, measures should be taken to avert any possible danger and for that reason one should not go to scrap the entire scheme but could eke such adjustments, alterations or additions which may ensure safety and security or at least minimise the possible hazards."

16. In M.C. Mehta v. Union of India (AIR 1988 SC 1115) and M.C. Mehta v. Union of India (AIR 1988 SC 1037) the Court on petition filed by a citizen taking note of the fact that the municipal sewage and industrial effluents from tanneries were being thrown in River Ganges whereby it was completely polluted, the tanneries were closed down. These judgments go a long way to show that in cases where life of citizens is degraded, the quality of life is adversely affected and health hazards are created affecting a large number of people, the Court in exercise of its jurisdiction under Article

199(1)(C) of the Constitution may grant relief to the extent, of stopping the functioning of factories which create pollution and environmental degradation.

17. In the case in hand the likelihood of any hazard to life by air pollution that is dangerous to human health and surrounding environment cannot be ignored. At the same time in the view of what has been discussed above, the petition in hand stands dismissed, however we direct the Provincial Government/Home and Tribal Affairs Department to follow up/expedite the extension of the Khyber Pakhtunkhwa Environmental Protection Act, 2014 positively within 04 months and till then Deputy Commissioner Malakand is directed to ensure preventive and precautionary measures contained in Environmental Protection Agency's letter dated 26-08-2015 of all the Mills/Industries/factories situated in District Malakand.

As the main Writ Petition has disposed of, hence C.M # 1149-P/2015 has become infructuous as dismissed.

SL/483-P Petition dismissed.

Case : 32 DHA Karachi

2015 C L D 772

[Sindh]

Before Sajjad Ali Shah and Shaukat Ali Memon, JJ

PAKISTAN DEFENCE OFFICERS HOUSING AUTHORITY through Secretary---Petitioner

versus

SINDH ENVIRONMENTAL PROTECTION AGENCY through Director General and 2 others---Respondents

Constitutional Petition No. D-4192 of 2014, decided on 17th October, 2014.

Sindh Environmental Protection Act (VIII of 2014)---

----Ss. 17 & 31---Pakistan Environmental Protection Agency (Review of IEE and IEA) Regulations, 2000, Regln. 10---Constitution of Pakistan, Arts. 199 & 270-AA(6)---Constitutional petition---Environment Impact Assessment---Laws applicable---Concurrent List of the Constitution, omission of---Petitioner was a Housing Authority and assailed Environment Impact Assessment issued by authorities regarding projects of respondent company---Validity---Even after omission of concurrent legislative list all Ordinances, orders, rules, bye-laws, regulations and notifications and other legal instruments having force of law made in respect of any matter enumerated in that list continued to remain in force until altered, repealed or amended by competent authority---Provisions of Pakistan Environmental Protection Agency (Review of IEE and IEA) Regulations, 2000, were neither altered nor repealed or amended, therefore, the same continued to remain in force until and unless regulations and rules framed under Sindh Environmental Protection Act, 2014---Law applicable was Sindh Environmental Protection Act, 2014 and Pakistan Environmental Protection Agency (Review of IEE and IEA) Regulations, 2000---Law did not impose responsibility of adjudication of grievances of stakeholder while approving Environment Impact Assessment, however provided for reasoning only when the Agency after examining Environment Impact Assessment rejected project being contrary to environmental objectives---In case Environment Impact Assessment was granted law had provided that approval would specify conditions subject to which it was accorded---Approval in favour of respondent company specified conditions on the basis whereof approval was accorded---Requirement of submitting Strategy Environmental Assessment (SEA) was to be undertaken by government agencies, departments, authorities, local councils before formulating prescribed categories of policies, plans and programs for areas which could cause environmental impact in the Province of Sindh and not in respect of

project, which was being constructed in an area in respect whereof government had already made a policy by declaring it a "High Density Zone"---High Court declined to interfere in approval granted by authorities in favour of respondent---Petition was dismissed in circumstances.

Abid S. Zuberi and Muhammad Haseeb Jamali for Petitioner.

Muhammad Imran Sabir for Respondent No.1.

Farooq H. Naek for Respondent No.2.

Khalid Jawed Khan for Respondent No.3.

Dates of hearing: 12th, 29th, 30th September, 1st and 2nd October, 2014.

JUDGMENT

SAJJAD ALI SHAH, J.---The petitioner seeks following reliefs from this Court:-

(i) Declare that impugned decision on EIA bearing Ref No.EPA/2014/05/27/EIA/09 dated 5th August, 2014 (Annexure P/1) is illegal, mala fide, unconstitutional, contumacious, biased, non-speaking and in sheer violation of Act, 1997, regulations 2000 and Order dated 29th April, 2014 passed by this Hon'ble Court in Suit No.538 of 2014.

(ii) Set aside the impugned decision on EIA bearing Ref No.EPA/2014/06/27/EIA/09 dated 5th August, 2014 (Annexure P/1).

(iii) Grant Permanent Injunction restraining the respondents Nos.2 and 3 directly or indirectly, through their officers, subordinates, employees or contractors from carrying out any construction work on basis of the said illegally procured impugned decision on EIA dated 5th August, 2014.

2. Briefly, the respondent No.2 after submitting Initial Environmental Examination (IEE) launched a project comprising, a flyover and underpasses known as "Grade Separated Traffic Improvement Plan" starting from Park Tower Intersection till A.T. Naqvi Roundabout (hereafter referred to as "said Project"). The respondent No.3 was financing the said Project, as inter alia it was to provide access to its Project known as Bahria Icon Tower a 68 storey building having its own shopping mall, hotel, cinemas and other facilities. The grievance of the petitioner was that since this project involved major construction work to be carried out along with the stated roads which ultimately could affect the traffic influx on 26th street, therefore, before undertaking a project of such nature respondent No.2/KMC ought to have submitted Environmental Impact Assessment (DA) so that the grievances and concerns of the petitioner DHA and others could be heard and

redressed. The petitioner consequently filed a Suit bearing No.538 of 2014 on the Original Side of this Court with several prayers out of which prayer clauses "a" and "b" are relevant to understand the exact nature of controversy and are reproduced hereunder:-

(a) Declare that the plaintiff authority and its residents are entitled for participation in public hearing mandatorily required to be conducted before approval of the impugned project under the provisions of Environmental Protection Act, 1997.

(b) Declare that failure of the respondents Nos.5 and 7 to submit Environmental Impact Assessment and obtain its approval before starting execution of the impugned project is illegal, unlawful, unconstitutional, mala fide, arbitrary and in violation of principles of natural justice.

Along with suit an application viz. C.M.A. No.4314 of 20l4 seeking interim relief was also moved which was heard and was decided vide order dated 29-4-2014 directing the proponent of the "said project" i.e. KMC to stop all construction in relation to or touching upon the "said project" till an EIA is approved by the Sindh Environmental Protection Agency. The relevant portion of the order is reproduced hereinbelow:-

"28. Accordingly, C.M.A. No.4314 of 2011 is allowed in terms that it is ordered that all construction of in relation to or touching upon the Project is restrained and stopped forthwith. However, nothing in this order shall prevent KMC, as proponent, from submitting an EIA for consideration by the Agency. If such an EIA is submitted it must be accorded top priority. The agency must deal with the EIA while acting strictly in accordance with law and adhering to the provision of the 1997 Act and the 2000 Regulations including in particular, as identified and explained herein above. If after such consideration, the EIA is approved (whether with or without conditions) KMC shall be at liberty to move an appropriate application in this suit for recall and vacation of the order made above. Such application must be listed immediately and on priority basis and the office is directed to act accordingly. If the EIA submitted by KMC is rejected it will of course be entitled to its remedies in accordance with law."

It appears that in consequent to such directions the respondent No.2 submitted an EIA for consideration of the respondent No.1 who after inviting the objection and hearing the stakeholders vide its decision dated 30-6-2010 accorded its approval. The petitioner being aggrieved has impugned the grant of EIA through instant petition.

3. Mr. Abid S. Zuberi, learned counsel for the petitioner has contended that through order dated 29-4-2014 the respondents were directed to submit EIA and consequently KMC applied for EIA on 3-5-2014 and on 4-7-2014 Sindh Environmental Protection Agency (hereinafter referred to as "Agency") through public notice published in Daily Dawn invited objections and fixed public hearing of the project on 22-7-2014 in the committee room of KMC Building,

M.A. Jinnah Road, Karachi. The petitioner filed its detailed objections and the Agency without considering the objections on 5-8-2014 approved EIA. Per counsel looking, at the magnanimity of the project and its far reaching effect approval of EIA in just three months reflects that no serious efforts were made by the Agency to address or redress the issues raised by the petitioners. It was contended that various issues including the traffic congestion on 26th street as a consequence of "said Project" raised by the petitioner were not addressed by the Agency in their impugned decision. It was further contended by the learned counsel that the impugned decision of the Agency is in violation of Regulation 10 of the Pakistan Environmental Protection Agency (Review of IEE and IEA) Regulations, 2000 (hereafter referred to as "Regulations 2000") and section 31 of the Sindh Environmental Protection Act, 2014 (hereinafter referred to as "Act of 2014") which provides for meaningful public hearing, as the concern/issues raised by the petitioner were neither collated, tabulated nor accepted or rejected in the impugned order. Per counsel, the provisions of section 18 of the Act of 2014 require strategic environmental impact study which was not conducted before submission of EIA. Per counsel, it is mandated by section 31 that the objections received in public participation are duly considered accepted/rejected while reviewing EIA which was violated by the Agency.

4. While projecting primary objection of the D.H.A., Mr. Abid Zuberi contended that on account of flyover the influx of the traffic will increase many times, as the commuters in order to use this flyover would come through E-junction leading towards Shahrah-e-Firdousi which would increase traffic many a times and would cause serious traffic congestion near 26th street.

5. Mr. Farooq H. Naek, learned counsel for the KMC, while inviting our attention to para '8' of the petition, has contended that the main grievance of the petitioner is that the flux of thoroughfare traffic will be diverted to the residential area, which would cause serious noise and air pollution in the residential area and traffic congestion on E-intersection leading to 26th street which is totally presumptive and requires evidence. Mr. Naek further contended that Clifton area has been declared as high density area and number of high rise buildings are being constructed including Bahria Icon Tower 68 storey by the respondent No.3 and to resolve the traffic issue the "said project" was launched which would not benefit only Bahria Icon Tower but would facilitate commuter and vehicular movement in the entire area. It was further contended that the "said project" is one way and would facilitate the traffic from E-intersection till after the Abdullah Shah Ghazi Shrine whereas the underpasses would further facilitate the traffic. Mr. Naek further while inviting our attention to para-15 of the petition contends that the petitioner itself has admitted the participation in public hearing after filing detailed objections and from perusal of the petition it appears that the petitioner is claiming that EIA is not compliant of the definition as appears in section 12 of the Pakistan Environmental Protection Act,

1997 (hereinafter referred to as "Act of 1997"). Per counsel since the Act 1997 is no more in the field, therefore, the petition itself is incompetent. Mr. Naek further contended that before 18th amendment Environmental pollution and ecology was a federal subject and appeared as Item-24 of the concurrent legislative list which, after 18th amendment stood abolished and therefore, the environment pollution has become a provincial subject and therefore, Act of 1997 and Regulations of 2000 could not be applied to the provinces. Mr. Naek further contended that the Agency while according approval of EIA has incorporated number of conditions which were necessary to eliminate the environmental hazard the non-observance whereof would entitle the Agency to revoke the EIA approval, therefore, the concern of the petitioner is misplaced. It was next contended that though section 18(1) of the Sindh Environmental Protection Act, 2014 specifies strategic environmental assessment however, subsection (3) thereof lays down the provisions of subsection (1) shall apply to such categories of policies programs and plans and in such manner as prescribed and since till date neither the categories nor policies, plans or programs have been specified, therefore, proviso is inapplicable. Mr. Naek lastly contended that section 24-A of the General Clauses Act is not applicable in case where the Agency grants EIA but would apply in case where it refuses to grant EIA. Reliance was placed on Article 175-A(12) and its first and second proviso.

6. Mr. Khalid Jawed Khan representing Bahria Town (Pvt.) Limited contended that Bahria Town (Pvt.) Limited had undertaken the construction of high-rise building known as Bahria Icon Tower somewhere in the year 2010 and before undertaking the construction of Bahria Icon Tower it had submitted EIA and the Agency while granting permission vide Clause X had required Bahria Town (Pvt.) Ltd. to conduct a traffic study and traffic management plan to facilitate the commuters and vehicular movement, in and around Icon Tower. Per counsel instead of adopting limited and short term measure. Bahria caused a detailed traffic study and traffic management plan through leading expert not only towards Bahria Icon Tower but in or around where severe traffic problem was expected. In this background and to comply with the condition X of the EIA Bahria offered to financially assist KMC to undertake the "said project". Counsel while denying the argument that the said project would cause serious noise and air pollution in the residential area or traffic congestion on 26th Street or E-intersection contended that the traffic flowing from Park Towers towards 26th street would remain on three lanes as existed before while the traffic coming from DHA/26th Street/E-intersection towards Park Tower would use the one way flyover. Per counsel the flyover would facilitate the traffic from DHA/26th street/E junction and would not result in choking traffic. Mr. Khalid Jawed Khan contended that the said project which involves the cost of about Rs.1.15 billion commenced after the Agency has granted IEE on 18-3-2014 and more than 40% of the work has already stands executed. Per counsel an additional amount of Rs.70 crore was spent to secure the shrine of Abdullah

Shah Ghazi under Independent Management Consultant under an order of this Court passed in Const. Petition No. ID-4604/2014. While dilating the procedure adopted by the Agency before according its approval in respect of EIA, it was contended that KMC submitted EIA to the Agency which after its examination invited stakeholders for public hearing through public notices published in newspapers, whereafter comments were received from various stakeholders followed by a public hearing. The Agency thereafter sought comments from KMC who submitted parawise response to the comments whereafter the Agency referred the CIA, comments and response to the comments to expert appointed under section 7(e) of the Act, 2014, followed by a meeting of Expert Committee to finalize the matter and thereafter impugned decision of EIA was issued by the Agency, subject to the conditions enumerated therein. Responding to the objection raised by Mr. Abid S. Zuberi as to the violation of sections 17 and 31, of the Act 2014 as well as Regulation 10 of the Regulation 2000. Mr. Khalid contended that full opportunity was provided to all stakeholders to raise objections and they were also granted public hearing and the proponent was confronted with those objections which were duly responded and thereafter all material was considered by the leading experts in the field of environment and after such lengthy exercise Agency granted its approval. Per counsel it was a technical issue where the concerns of the Agency was whether EIA for the project should be refused, re-submitted or granted and if so subject to what condition, therefore full compliance of section 17(2)(b) of the Act 2014 was made. Per counsel there was no requirement to individually inform each agency or individual about the fate of its specific comments and or reasons for its upholding or rejection therefore, the objection of Mr. Abid that DHA should have been informed about the fate of their objections is misconceived. Mr. Khalid further contended that even section 31(3) of the Act, 2014 did not require that reasons for rejection of objection be spelled out in the decision itself. All what is required was that decision or action should be communicated. As to the submission of Strategic Environmental Assessment, per counsel the provision is inapplicable to the case in hand as this provision has been introduced through Act 2014 for the first time and it requires the development authorities such as KMC, DHA. Cantonment Board to start preparing strategic environment assessment on a macro level for areas and not for a single project. Additionally, it would have prospective effects and requires planning authorities to process its compliance. It was therefore, prayed that EIA was lawfully granted by the Agency after fulfilling all statutory requirement and therefore, the petition being misconceived be dismissed.

7. We have heard the learned counsel for the respective parties and perused the record of the case with their able assistance.

8. Since the order of the learned Single Judge on the Original Side dated 29-4-2014 directing the proponent of the project i.e. KMC to file EIA as of today is in the field as an appeal against the said order

was dismissed as infructuous, therefore, we without entertaining the argument of Mr. Naek that the project required IEE and not EIA, would proceed to decide as to whether the EIA granted by the Agency was in accordance with the legal requirement.

9. As to the application of law, though in the memo of petition the petitioner in several paragraphs has asserted the non-compliance of Act, 1997 and Mr. Naek while inviting our attention to these paragraph has sought dismissal of the petition on the ground that since Act 1997 is no more in the field therefore, the petition itself is misconceived. However. during the arguments Mr. Abid has conceded that since the petitioners had filed EIA on 2-5-2014, therefore, the law applicable as rightly pointed out by Mr. Naek would be Act, 2014 which came into force on 20-3-2014 and that he would argue his case within the parameters of Act 2014, therefore, in our opinion at the most it could be a case of quoting wrong law which of course is of no consequence as proper application of law is the function of the Court. Mr. Naek next had invited our attention to various provisions of Act, 2014 such as Clauses XLIV and XLV of section 2 of Act, 2014 which define regulations and rules respectively as "made under this Act i.e. Act of 2014 and has asserted that since neither the regulations nor rules have been framed under the Act 2014 therefore, the argument of Mr. Abid pleading violation of Regulation 10 of 2000 was misconceived. However, during arguments Mr. Naek himself has pointed out Sub-Article (6) of Article 270-AA which provides:-

"Notwithstanding omission of the concurrent Legislative List by the Constitution (Eighteenth Amendment) Act, 2010 all laws with respect to any of the matters eminerated in the said List (including Ordinances, Orders, Rules, by-laws, Regulations and Notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof or having extra territorial operation, immediately before the commencement of the Constitution (Eighteenth amendment) Act, 2010, shall continue to remain in force until altered, repealed or amended by the competent authority".

10. Perusal of above reproduced Sub-Article would reveal that even after the omission of the concurrent legislative list all Ordinances, orders, rules, bye-laws, regulations and notifications and other legal instruments having force of law made in respect of any matter enumerated in the said list shall continue to remain in force until altered repealed or amended by the competent authority and since Regulations 2000 admittedly have neither been altered nor repealed or amended therefore, in our opinion the same would continue to remain in force until and unless regulations and rules are framed under the Act of 2014. The law applicable, therefore, in our opinion is Act of 2014 and Regulation 2000.

11. Coming to the exact nature of project, perusal of the layout plan as well as EIA submitted by the proponent reflect that the said project comprises of two independent units i.e. flyover towards A. T.

Naqvi Chowk and underpasses for entry/exit. The EIA gives the description of the said project as follows:-

(i) Flyover along 26th Street/Shahrah-e-Firdousi providing for uninterrupted traffic movements along Shahrah-e-Firdausi from DHA/Khayaban-e-Ittehad side towards A.T. Naqvi Chowk (Intersection) and onwards to Bin Qasim Park along with a direct access to the Bahria Town Icon Tower by means of an exclusive down ramp, improved traffic management at A.T. Naqvi Chowk under the above Flyover.

(ii) Underpasses for entry exit movements to from Bahria Town Icon Tower and Clifton Funland without any interruption to the through movements on main Shahrah-e-Firdausi, Interchange between Shahrah-e-Iran and Shahrah-e-Firdausi near Park Towers Intersection leading to 2-Talwar Intersection. Other at-grade improvements for better traffic management in the entire area, and Provision of a number of grade separated pedestrian crossing at important locations.

The petitioner has not objected so far as the construction of underpasses are concern and as to the flyover the thrust of the submission was that it would create congestion on 26th Street leading to E-Junction and would cause sound and air pollution at the residential area of DHA and as picked up by us from the comments of DHA Para 4.2.2 onwards reproduced below:-

"4.2.2. The project is designed for 3 X lanes carriageway in both directions, which will be reducing to 2X lanes the moment it enters in DHA. Hence the entire traffic which will not only funnel up at E-Street junction but will have increased waiting time and extra ordinary Que lengths ranging between 67 to 93 meters. This shall result into serious Environmental Social hazards because of increase in noise level, excessive gas emissions, enhanced pollution level, more requirement of policing and other maintenance hazards.

4.2.3. The flyover itself will act as a main attraction for traffic coming from the city there by tremendously increasing the volume and congestion in DHA generally and 26th Street in particular 26th Street is at LOS "D"/"E" which will reduce in LOS "F".

4.2.4. Due to the increase in speed of the traffic from Bilawal Chowk to A.T. Naqvi Chowk because of the flyover the congestion from other areas will be shifted into DHA.

The concern of the DHA as per record was duly communicated to the proponent of the project in order to obtain their comments and the proponent while denying the assertions/concern of the DHA, as reproduced above in response asserted that the concern of the DHA is just misconceived assumptions. It was asserted that the flyover would carry traffic moving out of the DHA area and going towards the city/Mai Kolachi Road.

12. Considering the concern of DNA in the context that after the Clifton area has been declared high density zone number of high rise projects are coming up such as the respondent No.3's project Bahria Icon Tower of 68 storeys. Come 3 near Bar-B-Q tonight comprising of four towers with 35 storey. Riveria 70 opposite Bahria Town Icon Tower comprising of 35 storey mega projects in Phase-8, DHA including by Emaar. Ovation Tower (42 storey) etc. which would not only generate huge traffic flow but of course would cause related problems, which would require traffic management plan on a higher scale as well as mitigation measures on small scale such as flyovers to facilitate traffic by passing rushy area or busy crossings. The petitioner themselves in their comments have admitted that the flyover would cause increase in traffic speed and consequently congestion from other areas would be shifted into DHA. Even the Agency after considering the concern has recommended a solution by way of flyover at Khayaban-e-Shamsheer. In our opinion even if this project is not allowed to be constructed still on account of 68 storey residential-cum-commercial building and the other high rise buildings in the offing, the traffic at Clifton would increase many a times and of course would cause severe traffic problems but to say that the construction of this project would increase traffic volume does not appeal to the logic. Besides, to say that the flyover would attract vehicular traffic on account of increase in traffic speed from E-Junction to Bilawal Chowk and for this reason the traffic load would increase and or the flyover would reduce traffic load being factual controversies and that too based on probabilities and therefore, neither these controversies could be decided by us while exercising writ jurisdiction nor any finding of fact could be given thereon. Even otherwise, issue before us is the non-observance of statutory provision of Act 2014 and Regulation 2000 by the Agency while approving EIA. However, what need to be recorded is that the concern of the DHA on this issue were duly considered by the Agency by calling comments from the proponent in accordance with law and, thereafter, by imposing number of conditions while approving EIA.

13. Now we would examine as to whether the Agency has approved EIA while violating Regulation 10 of 2000, sections 17, 18 and 31 of the Act of 2014 as pleaded by Mr. Zuberi Regulation 10 of 2000 as well as sections 17 and 31 of the Act of 2014 all provide for public participation. Perusal of Regulations 9 and 10 of 2000 in juxtaposition would reflect that alter filing of EIA the Agency would complete its scrutiny within 19 working days and in case it is found complete in all respect for the purposes of initiation of review process would cause a publication in any English or Urdu national newspapers and in a local newspaper having general circulation in the area affected by the project, a public notice mentioning the type of project, its exact location, the name and address of the proponent and the places at which the EIA of the project can be accessed. The publication to also mention date, time and place for public hearing of any comments on the project or its EIA which shall not be earlier than 30 days from the date of publication of the notice. The

comments received by the Agency from the public or any Government Agency shall be collated: tabulated and duly considered by it before decision on the EIA whereas Regulation 12 provides that on completion of the review, the decision of the Federal Agency shall be communicated to the proponent in the form prescribed in Schedule VI. Likewise, section 17(3) of the Act of 2014 provides that every environmental impact assessment shall be carried out with public participation and after full disclosure of the particulars of the project. In the same manner section 31 of the Act of 2014 provides that the Agency shall cause relevant details of any proposed project regarding which an environmental impact assessment has been received to be published along with an invitation to the public to furnish their comments thereon within specified period and the Agency in accordance with such procedure as may be prescribed shall hold public hearing to receive additional comments and/or oral submission. It further provides that all comments received by the Agency and/or oral submission shall be duly considered by the Agency while reviewing environmental impact assessment or strategic impact assessment and the decision or action taken thereon shall be communicated to the persons who have furnished said comments.

14. There is no denial of the fact that the EIA was submitted by the KMC on 2-5-2014 and after initial review a public notice to conduct public hearing as well as inviting comments from the general public and stakeholders regarding construction of the said project was duly published in daily Dawn and Jang on 4-7-2014. Public notice does provide the detail of the project, its location name of the proponent and web address where the project could be accessed. It also provided date, time and place for public hearing. It also appears to be an admitted position that a public hearing was conducted wherein DHA and other stakeholders such as Mst. Yasmin Lari, all Hindu rights organization, DHA Residents, Sheri and HRPC had filed their comments which were forwarded by the Agency to the proponent of the project i.e. KMC for their response. KMC responded to the comments of all stakeholder thereafter the Agency forwarded the comments and response of the proponent to the experts followed by a meeting and thereafter the Agency on 5-8-2014 approved EIA of course subject to various conditions mentioned therein. In our opinion the process adopted by the Agency appears to be in line of scheme provided under the law.

15. As to the contention of Mr. Zuberi that the objections filed on behalf of the DHA should have been collated, tabulated duly considered, accepted or rejected through a speaking order. Perusal of the record reflects that the comments received through public participation were duly tabulated, examined and response of the proponent was sought therefore, the contention to that extent appears to be misconceived. As to second portion of the contention, there is nothing on record to show that the comments were either accepted or rejected through a speaking order. To examine this portion of the argument, minute perusal of Regulation 2000 as well

as Act of 2014 would reflect that there is no provision in either which provides for filing of objections to the EIA or an order thereon which of course presupposes reasoning on the contrary it provides for filing of comments and thereafter a decision. For instance Regulation 10(2) provides that public notice issued under sub-regulation (1) shall fix a date, time and place for public hearing of any comments on the project or its EIA. Likewise, sub-regulation (5) provides that all comments received by the Federal Agency from the public or any Government Agency shall be collated. tabulated and duly considered by it before decision on the EIA, even section 31(3) of Act 2014 provides that all comments received shall be duly considered by the Agency while reviewing EIA or SEA and the decision or action taken thereon shall be communicated to the persons who have furnished the said comments. On the other hand, Regulation 12 of 2000 provides that the decision of the Agency in case of an EIA shall be communicated to the proponent in form prescribed in Schedule VI, which is reproduced hereinbelow:-

"SCHEDULE VI

[See Regulation 12]

Decision on EIA

(1) Name and address of Proponent ----------

(2) Description of project ----------

(3) Location of project ----------

(4) Date of filing of EIA ----------

(5) After careful review of the EIA, and all comments, thereon the Federation Agency has decided.

(a) to accord its approval, subject to the following conditions;

or (b) that the proponent should submit an EIA with the following modifications.

or (c) to reject the project, being contrary to environmental objectives, for the following reasons:

[Delete (a)/(b)/(c), whichever is inapplicable]

Dated ----------

Tracking No. ----------

Director-General

Federal Agency

(with official stamp seal)"

Perusal of the form provided for the decision of an EIA negate the contention of Mr. Zuberi that the Agency ought to have accepted or rejected the objection of the petitioner through speaking order. In fact the law does not impose the responsibility of adjudication of grievances of stakeholder while approving EIA, however, law provides for reasoning only when the Agency after examining the EIA rejects the project being contrary to the environmental objectives and in case where EIA is granted law only provides that the approval shall specify the conditions subject to which it is accorded, and in the instant case approval specifies such condition on the basis whereof approval was accorded.

16. Coming to the last contention of Mr. Zuberi that no Strategic Environmental Assessment (SEA) was conducted which was a prerequisite to the grant/approval of EIA. Section 18 of the Act 2014 provides for submission of Strategic Environmental Assessment and the term Strategic Environmental Assessment (SEA) has been defined in clause (l) to section 2 of Act 2014 as "an analysis of a proposed policy, legislation, plan or programme to determine whether the principles of sustainable development have been integrated therein and to identify its likely environmental effects and such components as required an initial environmental examination or environmental impact assessment."

17. Keeping in view the definition of SEA, it needs to be examine as to whether the proponent in this case was even required to submit SEA. The perusal of section 18 of the Act of 2014 reflects that the Strategic Environmental Assessment is to be submitted by the provincial agencies, departments, authorities, local councils and local authorities, responsible for formulating the policies, legislations, plans and programmes which may cause any environmental impact in the province of Sindh. The law provides that such authorities before formulating any such legislation, plan and program which may cause any environmental impact would submit to the Agency a Strategic Environmental Assessment containing the details as described in section 18(1)(a) to (d). The Agency thereafter in consultation with the concerned government agency and advisory committee where established, review the strategic environment assessment and would prepare a report containing its comments and recommendation which would be forwarded to the initiating government Agency, authority, local council or local authority which would be duly considered be it and the competent authority before approval or otherwise of the proposed policy, legislation, plan or programme. However, the condition of forwarding a SEA to the Environmental Protection Agency is not applicable in respect of all policies, legislation, plans and programmes which may cause any environmental effect in the jurisdiction of province of Sindh but by virtue of subsection (3) of section 18 of Act, 2014 its application is restricted to such categories of policies, plans and programmes and in such manner as may be prescribed". The Act of 2014 itself does not prescribe the categories of policies, plans and programmes in respect whereof SEA

is to be forwarded and since in the Act of 1997 there was no similar provision for submitting SEA, therefore, the Regulations of 2000 are also totally silent on this issue. However, term "prescribed" has been defined in clause (xli) to section 2 of Act of 2014 and means "prescribed by rules made under the Act of 2014" and since rules in terms of clause (xlv) of section 2 of Act, 2014 till date have not been framed, therefore, before applying the provisions of section 18 the Agency in terms of section 36 of the Act of 2014 has to notify the rules and/or has to specify the categories of policies, legislations, plans and programmes to which provisions of section 18 are to be made applicable. The discussion hereinabove leads us to the conclusion that the requirement of submitting Strategy Environmental Assessment (SEA) is to be undertaken by the Government agencies, departments, authorities, local councils before formulating prescribed categories of policies, plans and programmes for areas which may cause environmental impact in the Province of Sindh and not in respect of a project, which is being constructed in an area in respect whereof the Government has already made a Policy by declaring it a "High Density Zone".

18. In view of what has been discussed above, we find this petition meritless and dismiss the same.

MH/P-29/Sindh Petition dismissed.

Case No: 33 Attique Rehman

2009 C L D 1048

[Lahore]

Before Hafiz Tariq Nasim and Syed Hamid Ali Shah, JJ

ATTIQUE REHMAN and others---Petitioners

Versus

ENVIRONMENTAL TRII3UNALS and others-Respondents

E.A. No.1 of 2006, decided on 23rd February, 2009.

ORDER

Nineteen persons of the locality of Khaliq Street, Ihata Barkat Ali outside Mochi Gate, filed a complaint against the appellants that they have established a chilli-grinding unit in the residential area. It causes TNT and respiratory emissions. A report was called on 1-5-1989 and after receiving the report, notice to the appellant was issued under section 16(1) of the Pakistan Environmental Protection Act 1997. Environmental Protection Order (EPO) was issued on 4-8-1989, wherein it was found that Industrial unit of the appellants spreads spices dust and causes severe air pollution. The appellants assailed the order in W. P. No. 15358 of 1999. The petition was disposed of vide, order dated 26-8-1989 with the direction that no coercive measures shall be adopted against the appellants, till the functioning of the Tribunal. The Tribunal subsequently directed for re-inspection of the industrial unit. The site was inspected on 2-10-2004, 4-10-2004 and 8-10-2004. It was reported that unpleasant chilli smell odor, is a constant irritant and causes air pollution. The Tribunal vide impugned order dated 27-10-2005 affirmed the decision regarding closure of the industrial unit, but set aide the order of the provincial agency, regarding shifting of the chilli grinding unit, from it's existing premises.

The appellant, through instant appeal, has now assailed the judgment of learned Tribunal.

2. Learned counsel has repeated the arguments, which were addressed before the learned Tribunal. It was submitted that no inquiry had been conducted nor the appellants were associated with any inquiry. The mandatory notice under section 16(1) was not issued to the appellant. The action against the appellant is mala fide and provincial agency has no lawful authority to pass the order of shifting of the grinding unit. The impugned action is without jurisdiction. Learned counsel in support of this contention has referred to the case of "State Life Insurance Corporation of Pakistan v. Director General Military Lands and Cantonments, Rawalpindi and 4 others" 2005 SCMR 177. He has referred to the judgment reported as AIR 1995 Orrisa 1984 (from India jurisdiction) and

contended that order of shifted of the unit is not within the jurisdiction of the respondent agency.

3. Learned counsel for the respondent has, however, submitted that the appellant was provided adequate opportunity of hearing DG, EPA visited the premises thrice and his report was submitted to the Tribunal on 8-8-2004. The unit is involved in the business, which has adverse effects on the health of the residents of the locality.

4. Heard learned counsel for the parties and record perused.

5. The appellant's unit was found constant cause of discharge or emission of effluent, which results into severe Air pollution. Environmental Protection Order, dated 8-5-1999 was passed, while exercising powers under section 16 of the Act of 1997 and the petitioner was directed to stop the operation of the unit. The appellant was served with the notice, which was received by his nephew Muhammad Asif. The notice regarding Environmental Protection Order, dated 4-8-1999 was received by appellant's son Khalique-uz-Zaman. The Environmental Consultant Engineer, Mumtaz Hussain studied the report of the Inspector Environment and visited the unit. As per Environmental offices, the unit was found constant cause for pollution. Loading and uploading was not found up to the standards. Crushing and grinding was found creating severe chilli dust and there were various points wherefrom chilli dust escaped through holes in the roof, walls and doors. The inspection of the project was carried on the direction of the Tribunal. The report submitted after three visits to the units reveals that emission from the project, is injurious to the health of the residents and constant source of irritation, which causes various respiratory diseases. The Environmental Protection Order, Environmental Protection Assessment and the report of the Director General (Environment) (on the direction of the learned Tribunal), is sufficient evidence to prove that the appellants are involved in a business, which offends provisions of the Environmental Protection Act, 1997.

6. The notices were issued under section 16(1) of die Act and impugned action against the appellant was taken within the parameters of law. The order, therefore, is devoid of any illegality or infirmity to call for interference in this appeal. Learned counsel for the appellants has wrongly contended that the Tribunal has affirmed the order/direction of EPA, regarding shifting of unit from existing place to some other place. The impugned order passed by the Tribunal is clear. It has been held by learned Tribunal that shifting of the unit from it's existing place to another site, is not a lawful order and such order is in conflict with the provisions of PEPA, Act and it's preamble. Learned Tribunal, therefore, set aside the order, whereby the appellant was directed to shift its project.

7. Environmental Protection Order was passed on 4-8-1999, while the appellant is delaying the matter, by fighting on mere technicalities for the past ten years. The unit has been established in a residential area and permitting to function such industrial

project (obnoxiously) for a considerable long time by offending the provisions of the Act, will not save the purpose of law and justice. This illegal activity has to come to an end. It should not be allowed to be carried on, under the shelter of frivolous and technical objections.

8. This appeal, for the foregoing, has no force and is accordingly dismissed.

S.A.K./A-90/L?? Appeal dismissed.

Case No:34 Haji Muhammad Hussain

2008 C L D 1171

[Peshawar]

Before Muhammad Raza Khan, CJ

Haji MUHAMMAD HUSSAIN and another---Petitioners

Versus

D.C.O. DIR UPPER and another---Respondents

Civil Revision No.1075 of 2007, decided on 5th May, 2008.

Date of hearing. 5th May, 2008.

JUDGMENT

MUHAMMAD RAZA KHAN, C.J.---A civil suit was instituted by the present petitioner Haji Muhammad Hussain seeking a perpetual injunction against defendant/respondent No.2 with a purpose to restrain him from operating the Stone Crushing Plant near the residential area of the plaintiff. There is also a prayer for mandatory injunction to direct the said respondent/defendant to remove the plant and there is also a request for cancellation of the licence dated 1-12-2006.

2. The facts stated in the plaint are that defendant No.2 has installed a Stone Crushing Plant in the year 2006 near the village where the plaintiffs reside. Allegedly the plaintiffs moved several applications to the concerned authorities but they could not get a relief. Even the application under the Local Government Ordinance failed to achieve a positive result. Hence there was a request for the removal of the said plant as it was creating hardship to the residents of the area by dust and noise pollution and since respondent/defendant No.1 had issued a license without the actual verification of the damage done to the residents of the area by the concerned quarter, therefore, the prayer for cancellation of such license dated 1-12-2006 was also added to the suit.

3. The defendants contested the suit on legal and technical grounds specifically raising the issue of jurisdiction of the civil Court in view of the Environmental Protection Law. An other independent application for the rejection of the plaint under Order VII, Rule 11, C.P.C. was also submitted by the defendant-respondent. After getting a reply from the plaintiff, the case was fixed for arguments. In the meanwhile, the plaintiff submitted an application for the amendment of the plaint on 30-3-2007. The learned trial Court heard arguments on the application for temporary injunction, as well as the application for the rejection of plaint and the prayer for amendment of the plaint. On the adjourned date, the learned trial Court came to the conclusion that the Civil Court has no jurisdiction

in view of section 21(9) of the Environmental Protection Act, 1997 and therefore, the plaint was returned for submission to the appropriate forum and consequently the application for temporary injunction was also returned. The application for amendment of the plaint was declined with the observation that the plaintiff can institute an independent suit for damages if he so desires. The plaintiffs challenged the said order in appeal but the learned Additional District Judge-II, Lower Dir at Timargara vide the impugned judgment dated 27-4-2007 dismissed the appeal as well. Hence this revision petition.

4. I have listened to the arguments of the learned counsel for the parties and scrutinized the available material.

5. Both the courts have held that in view of the provision contained in the Environmental Protection Act, the civil Court did not have the jurisdiction to hear and decide the suit relating to pollution and therefore, the plaint was returned for presentation to the appropriate forum. The learned counsel for the petitioner argued that the civil Court was the Court of ultimate jurisdiction and the environmental laws do not exclude the jurisdiction of a civil Court in the matters covered by the Environmental Protection Act as well as by the normal law relating to the civil rights of the parties. The respondents however, argued that with the promulgation of the Environmental Protection Act the jurisdiction relating to pollution etc. fall within the exclusive jurisdiction of Environmental Protection Tribunal and therefore, the civil Court was left with no' authority to determine the controversy between the parties as the same could only be resolved by the Tribunal. Subsection (9) of section 21 of the Environmental Protection Act, 1997 lays down:--

'(9) No Court other than an Environmental Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of an Environmental Tribunal extends under this Act or the rules and regulations made thereunder."

6. By referring to the investigation conducted under the Environmental Protection Act, both the Courts have held that since the local investigation has confirmed that the dust was not creating any hardship to the people residing in the nearby area particularly when the defendant-respondent has installed the Dust Protection Mechanism in the form of a room and a sprinkler and therefore the requirement of the law has been satisfied and no action under the said law was possible against the defendant/respondent.

7. The observation of the Courts, refusing to exercise jurisdiction indicates the lack of appreciation of the nuisance created by a Stone Crushing Plant. The perusal of the comments submitted by the respondent-Department to the Environmental Protection Tribunal indicates that the location of the said plant near the residential area at the road side was confirmed. However, it was explained that under the instructions of the concerned authorities, the defendant-respondent had taken various steps to comply with the legal

provision for minimizing the fact of pollution. Allegedly the defendant/respondent had developed Water Sprinkling filter System on the conveyor built whereby the dust settles down and does not mix with the surrounding air and so the environment has been protected from the air pollution due to dust emission. Moreover, it was reported that with the construction of a dust control room over the crushing machine has controlled the dust generated through the process of crushing of stone. The entire effort of the local authorities for the prevention of pollution have focused their attention to the dust which normally emits during the process of stone crushing and allegedly, a room over the plant and sprinkling of water over the crushed material on the conveyor built is considered to be sufficient to provide a healthy atmosphere to the local residents. However, the fact of noise pollution has not been properly evaluated. The noise created by unloading the stone/bolders at the crushing site, the uploading thereof in the jaw crusher and the process of crushing as well as grading thereof certainly creates noise, in addition to dust, which may be unbearable for the nearby residents.

8. The purpose of the Environmental Protection Act, 1997 is to protect, conserve, rehabilitate and improve the environment for the prevention and control of pollution and promotion of sustainable development. The term "pollution" has been defined in clause XXXIII of section 2 of the Act in these words:--

"(xxxiii). "pollution" means the contamination, of air, land or water by the discharge or emission of. effluents or wastes or air pollutants or noise or other matter which either directly or indirectly or in combination with other discharges or substances alters unfavourably the chemical, physical, biological, radiational, thermal or radiological or aesthetic properties or the air, land or water or which may, or is likely to make the air, land or water unclean, noxious or impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to biodiversity."

Similarly, the term noise has been defined in Clause (30) thereof: --

"(xxx). "noise" means the intensity, duration and character of sounds from all sources, and includes vibration."

9. The term environment and environmental assessment has been defined in Clauses 10 and 11 thereof. Thus, not only noise but air pollution and other factor disturbing the ecology bio diversity or the heath of the citizen is the major aim of the said law. Section 11 of the Act prohibits certain discharge and emission whereas section 12 provides for the environmental impact assessment. By section 16, a procedure has been laid down for regulating the environmental protection and section 17 provides for the penalty for the contravention of the legal provision under the said Act which also includes the sentence of fine, imprisonment, closure of the factory, confiscation of machinery and equipment and section 21 thereof provides for the exercise of jurisdiction and powers of the

Environmental Protection Tribunal which includes subsection (9), reproduced hereinabove.

10. The scheme of the statute gives a look of an impressive and protective instrument which eliminates the possibility of exercise of jurisdiction by any other forum including the civil Court. However, the deeper appreciation would lead to the conclusion that the said law does not satisfy the protection of all the civil rights of the citizen which may be adversely affected by an irresponsible entrepreneur whereby nuisance may be caused to the citizen and in addition to the potential damage to the health, inconvenience faced by such citizen would go unchecked. The-present case is a typical example of the misuse of authority by the officers responsible for the proper protection of environment. The plaintiff/petitioner is aggrieved mainly of the noise but the local Inspectors are merely satisfied that at the time of their inspection of the functioning of the plant, the dust was still due to the use of sprinkler on the conveyor belt but they have not been able to confirm that the use of a sprinkler shall be automatic with the running of the crushing plant. There is also no indication that the dust shall not be emitted in the case when the sprinkler is out of order. No report has been made with regard to the mechanism for protection of noise pollution. The allegation of unbearable noise at late at night by the unloading and reloading of bolders has not been noticed. The judicial notice of such a noise can be taken that with the existence of such plant, at a distance of more than a kilometer, the peace and convenience of the residents of the area is disturbed whereas the alleged plant was installed merely at a distance of a furlong from the residential area.

11. The exclusion of jurisdiction under section 21 relates to the exercise of an authority to which the jurisdiction and power of the Environmental Protection Tribunal extends which has to act as an appellate authority under section 22 of the Act against the orders of a Federal or Provincial Agency under the provision of the Act or the rules and regulations. There is no information as to whether the said rules and regulations have been framed and approved as per sections 31 and 33 of the Act. But subsection (9) of section 21 shall at the most exclude the powers falling within the jurisdiction of the Tribunal. The provisions relating to the regulation procedure for protecting the environment and for the imposition of penalty is the exclusive jurisdiction of the Federal and. Provincial Agencies and the exercise of such power has not been excluded from the operation of the jurisdiction of other Courts. The penalty under section 17 can be imposed by the Environmental Magistrate under section 24 of the Act. Thus it can be held that the prayers contained in the suit instituted by the plaintiff petitioner were not directly the matters falling within the exclusive jurisdiction of the Environmental Tribunal and therefore, the jurisdiction of the civil Court was not ousted by the said provision of law. At the most it can be observed that a decision by E.P.A. or the Magistrate can be challenged exclusively with a Tribunal and the jurisdiction of the Civil Court shall be barred to that extent. The plaintiff had asked for the

prohibitory and mandatory injunction which was the exclusive jurisdiction of the civil Court. He had also prayed for the cancellation of license dated 1-12-2004 for the installation of Stone Crushing Plant issued by the District Coordination Officer. This part of the prayer did not fall within the competence of any of the authorities. Magistrate or Tribunal under the said Act. The additional prayer sought to be included in the plaint related to the recovery of damages was certainly the exclusive jurisdiction of the Civil Court. Even otherwise, the determination of question whether an act or omission by the defendant whereby the civil right of the petitioner or the environment of an area was being adversely affected was a pure question of fact which could be determined after recording evidence and therefore, the return of the plaint through the impugned order was not in conformity with the established practices.

12. In view of the above, this petition is allowed, the impugned judgments of both the courts are set aside and the matter is remanded to the learned trial Court for the adjudication of the suit on merits after recording evidence. No order as to costs.

H.B.T./111/P?? Petition allowed.

Case No:35 Sumaira Awan

2008 C L D 1185

[ENVIRONMENTAL TRIBUNAL PUNJAB]

Before Syed Zamir Hussain, Chairperson and Mansoor Akbar Kokab, Member Legal

SUMAIRA AWAN, SECRETARY GENERAL---Appellant

Versus

GOVERNMENT OF PAKISTAN and 10 others---Respondents

Complaint No. 76 of 2003, decided on 20th February, 2006.

ORDER

The above titled private complaint has been filed by the complainant Sumaira Awan, Advocate as Secretary General of Eco Green Society Pakistan (Registered) against 11 respondents, complaining that the respondents had constructed the Mall-Canal crossing-underpass and was in the process of constructing FCC road. Canal Crossing-underpass with an estimated cost of more than two hundred million of each underpass. Allegedly the projects have adverse environmental effects, degrading life of citizens and are health hazardous for her family members and a large number of people. It is further alleged that mandatory provision section 12(1) of Pakistan Environmental Protection Act, 1997 and rules and regulations prescribed thereunder were not fulfilled as the respondents, specially the respondents Nos.1 to 7 were obliged to file an environmental impact assessment (EIA) with the Provincial Environmental Protection Agency, (EPA) and only after having the NOC, the projects should have been commenced for the construction. Explaining the adverse Environmental effects, the complainant alleged in the complaint that eleven hundred fully grown up trees on the Canal Banks had been cut down, which had caused temporary and permanent adverse effects on the Environment by way of:

(I) Loss of flora and fauna and natural habitat for the biodiversity.

(II) Over exploitation of renewable resource..

(III) Increase in city atmospheric and surface temperature.

(IV) Increase of green house gases in the city.

(V) Increase of suspended particulate matter in the air.

(VI) Loss of green belts and walk ways of Canal Bank.

2. The complainant relying upon legal maxim, "Salis Topli Supreme Lex" (Welfare of the Public is Supreme Law), places herself within the ambit of aggrieved person to file the private complaint before this Tribunal after issuance of mandatory notice of not less than 30 days before filing of the complaint, to the EPA Punjab.

3. She requests to take action against the offenders under section 17 of the PEPA, 1997 and to stop them on-going process of construction till filing of EIA of said projects and obtaining of NOC thereof. Any other relief which this Honourable Tribunal deems fit to be granted to the complainant for the matter in hand, has also been prayed for.

4. All the respondents filed their respective replies to the complaint, wherein the main contender i.e. the respondents Nos.1 to 3 (Government of the Punjab through its Secretary, Communication and Works Department (C&W), Government of the Punjab, Old Anarkali, Civil Secretariat, Lahore, Ch. Munawar Bashir, XEN, Project Incharge (The Mall and FCC Underpass Projects), C& W Department, McLeod Road, Lahore), respondents Nos.4 & 5 (the concerned Officers/Projects Manager/Site Incharge for Contractor Messrs SKB), respondents Nos.6 and 7 (the project consultant/Site Incharge on behalf of the consultant) (NESPAK) and the respondent No.8 (Director, Parks and Horticulture Authority, '(PHA), denied the charges, specially pleading that firstly, for the Government of the Punjab, the , compliance of provision of section 12 of Environmental Protection Act, 1997 (EPA) was never required, secondly, to the extent of contractors, the liability to obtain the NOC for the projects was not legally indictable as in case, if the same was must, the respondents Nos.1 and 2 were the proponent of the Projects, thirdly, the cut of trees were the requirements for the project, the project on its own place, was Environment friendly and moreover those cut trees had been substituted by new plantation of sapling more than three times in numbers than the cut trees at the sites.

5. After filing of the said replies and before framing of charges against the respondents, two applications under section 265-K, Cr.P.C. were filed, first one by the respondents Nos.4 and 5 and the second one, by the respondents Nos.1, 2 and 3, for acquittal of the said accused respondents. Before proceeding upon the merits of the application, it is felt appropriate to jot down the admitted facts of the case in hand as the Tribunal is very much au courant of the legal notion that before framing of the charge (indictment of the accused) or recording of evidence, the application under section 265-K, Cr.P.C., is only considerable, when:-

(i) either exclusively legal question;

(ii) or mixed question of law and facts or question of facts.

Which are answered positively from the record so for built before the Tribunal, arises and the answer thereof makes the accusation not warranted by law.

5.1. None of the respondents specially the contending one obtained any NOC from the Environmental Protection Agency, Punjab after filing an Environmental Impact Assessment,

5.2. More than one thousand trees, including a few as old as hundred years in age, have been cut down.

5.3. By now both the underpasses had been completed and are in operation.

5.4. Both the projects were initiated by the Government of the Punjab, Communication and Works Department by issuing terms of references to the NESPAK (the consultant) and were cleared initially by the Provincial Development Working Party (PDWP), then by Central working Development Party (CDWP) and finally were approved in the meetings of the Executive Committee of the National Economic Council, Government of Pakistan (ECNEC).

6. Now reverting to the application, the main contentions of the applicants are quoted hereunder:--

(I) The projects have been completed therefore, the complaint has become infructuous.

(II) The filling of EIA, as per policy and procedure for filing of review and approval of EIA, Schedules I and II was never required.

(III) The consultant considered the Environmental aspects at length in the feasibility reports of the projects and moreover at the time of Environmentalists like the Secretary Environmental Division was especially invited in the meeting.

(IV) Respondents Nos.4 and 5 being the contractors, were not responsible for obtaining the NOC of the projects from the EPA, Punjab after filing of EIA hence to his extent no violation of section 12 of Environmental Protection Act, 1997 is attributable.

7. Taking the first objection pertaining to alleged commissioning of the projects after their completion to render the complaint as infractuous, we quote the provision of section 12(1) of Environmental Protection Act, 1997 hereunder:--

"No proponent of a project shall commence construction or operation unless he has filed with the Government Agency designated by Federal Environmental Protection Agency or Provincial Environmental Protection Agencies, as the case may be, or, where the project is likely to cause an adverse Environmental effects an Environmental Impact Assessment, and has obtained from the Government Agency approval in respect thereof."

8. It is to be read with provision of section 17 of the said Act which reads as:--

"Whoever contravenes or fails to comply with the provisions of sections 11, 12, 13 or section 16 or any order issued thereunder shall be punishable with fine which may extend to one million rupees, and in the case of a continuing contravention of failure, with an additional fine which may extend to one hundred thousand rupees for every day during which such contravention or failure continues."

9. Obviously the contravention connotes the act or omission done or committed in the past, therefore, no one can plead that since the past is over hence the courts or Tribunals are functus officio to take the cognizance of the offence. Rather it is always cognizable when the act or omission had actually been done or committed by an offender and so is reported. The cognizance of an offence is not warranted for acts or omission or offences likely to be done or committed or merely so apprehended to be committed.

10. Elaborating the second point the applicants projected the arguments that as per Schedule II, of the PEPA, 1997, there-building or re-construction of existing major road does not require "EIA". Both these under-passes lie at the right on way "Canal Bank Road, Lahore, having been declared a major Road and adding an underpass is a re-construction of existing road therefore, this addition is exempted. They further alleged that underpasses are merely an invert of bridges, whereas the bridges are essential components of the major roads, hence internationally the bridges and underpasses are considered the structures, highbred to road work. As per provision of Article 4 of Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000, the proponent of a project listed in Schedule II shall file an EIA with the Federal Agency and the provision of section 12 shall apply to such project. Likewise Article 5 of the same is quoted hereunder:--

5. Projects not requiring an IEE or EIA. (1) proponent of a project not falling in any category listed in Schedules I and II shall not be required to file an IEE or EIA;

Provided that the proponent shall file:--

(a) An EIA, if the project is likely to cause an adverse environmental effect;

(b) (not quoted)

(2) (not quoted)

(3) The provisions of section 12 shall apply to a project in respect of which an IEE and EIA is filed under sub-Regulation (1) or (2).

11. The Schedule-II embodied a list of projects requiring an EIA on the basis of different categories such as:--

(A) Energy;

(B) Manufacturing and processing;

(C) Mining and Mineral processing;

(D) Transport;

(E) Water Management, dams, irrigation and flood protection;

(F) Water supply and Treatment;

(G) Waste Disposal;

(H) Urban Development and Tourism;

(J) (Sic) Other projects.

12. It is pertinent to mention that the list of projects under each category or even the categories quoted above are not comprehensive in any respect to cover all the activities likely to be defined as a "project"'. Moreover the defined projects are ambiguous vis-a-vis their prescription in the list and one will remain always confused that what type of quantitative or' qualitative work tantamount to be covered as a project, as defined in a particular category. The first example can be had, among others, from the very first category quoted hereunder:

A. Energy

(1) Hydroelectric power generation over 50 MW;

(2) Thermal power generation over 200 MW;

(3) Transmission lines (11 KV and above) and grid stations;

(4) Nuclear power plants;

(5) Petroleum refineries.

13. One can easily question about the comprehensiveness of it by raising finger that in this category (Energy), the Solar or wind Energy or next generation Hydrogen based energy units have not been inducted into. For second, examples can be had from the category "D" quoted hereunder:

D. Transport.

(1) Airports;

(2) Federal or Provincial Highways or major roads (except maintenance, rebuilding or reconstruction of existing roads) with total cost of Rs.50 million and above;

(3) Ports and harbour development for ships of 500 gross tons and above;

(4) Railways works."

14. One cannot precisely think that what type of Railways Works in the above category requires EIA as mere describing; "Railway works" does give an impression that all types of works relevant to Railway, however, subject to falling within the definition of, "Project", as defined by section 2(xxxv) of the Environmental Protection Act, 1997, require EIA, no matter it might be as small as substituting a Railway Line or diverting the existing Railway track or Manufacturing each and every new locomotive Engine or Railway Bogy or building a new track in an area, where the Railway facility was not previously in existence.

15. Anyhow deliberating upon the projects listed at No.2 of above quoted category of transport (Federal or Provisional Highway or Major Roads with the total cost of 50 million and above) it is observed that exception is only for maintenance, rebuilding or reconstruction of existing roads. The applicants maintain that underpasses at both the under discussion points of Canal Road are to be considered reconstruction of existing roads.

16. We do not agree with the contention of the learned counsel as the phrase, "Reconstruction" is distinguishable from the phrase, "Construction". The phrase reconstruction, as per Black's Law Dictionary Seventh Edition has been defined as: --

"Reconstruction. 1. The act or process of re-building, re-creating, or reorganizing some thing < an expert in accident reconstruction >. 2. Patents. A rebuilding of a broken, worn-out, or otherwise inoperative patented article in such a way that a new article is created, thus resulting in an infringement < the replacement of the machine's essential parts was an infringing reconstruction rather than a permissible repair >. 3. (Cap.) The process by which the Southern states that had seceded during the Civil War were readmitted into the Union during the years following the war (i.e., from 1865 to 1877) < the 13th, 14th, and 15th amendments to the U.S. Constitution are a lasting legacy of Reconstruction."

In simple words we hold that reconstruction means to restore the existing road in its original shape, type and in dimensions without touching any addition or subtraction. Even otherwise to our view, "adding capacity to the roads system is always a new construction, what bears, by its nature, impacts to natural and social Environment. It is differentiable from, "maintenance" or "rebuilding" or even "improvements", what generally refer to superficial changes such as up grades and resurfacing.

The category J of Schedule-II is also quoted hereunder:-.

J". Other projects.

(1) Any other project for which filing of an EIA is required by the Federal Agency under sub-Regulation (2) of Regulation 5;

(2) Any other project likely to cause an adverse environmental effect."

17. Needless to quote, "Adverse Environmental Effect" as per provision of Environmental Protection Act, 1997, but in the light of admitted fact that approximately one thousand (1000) fully grown-up (some more than hundred years in age) trees were cut-down and so was even determined before the feasibility report, as the respondents Nos.1 to 3 explained it their written reply that some 1250 trees were to cut-down, we are definite in placing these projects of underpasses into this category i.e. J (2) of the Schedule-II, which in fact is an outcome of Regulation No.5(1)(a) of Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000, quoted hereinbefore in paragraph No.10 of this order. The fact that the respondents Nos.1 to 3 were aware about the likeliness of adverse Environment effects of the projects, is very much clear from their Terms and Reference made to the consultant (NESPAK) and so the consultant under specific headings dealt with the subject of Environmental effects of the projects during construction and afterwards completion, in a manner to its own expert experience, (Annexure-A appended with the reply submitted by the respondents Nos. 1 and 2).

18. Apart from discussing, "Underpass" a, "Project requiring EIA", an other fact brought on record by the respondents Nos. 1 to 3 draws, our attention to make some radical change in the whole scenario of the case in hand. The paragraph No.4 of their reply discloses that the feasibility reports of both of the projects were completed in June, 2003 and both of the projects were placed before the Provincial Department Working Party (PDWP). After approval from the PDWP the same were placed before the Central Development Working Party (CDWP) who after considering it thread barely, placed them before the Executive Committee of National Economic Council (FCNFC). They have also approved the minutes of the meeting of Central Development Working Party (CDWP) held in July, .2003, pertaining to Item No.CD-35, Construction of Underpass at Mall Canal Crossing Intersection. A relevant observation, recorded in the minutes of the meeting is reproduced hereunder:--

" .The proposed underpass would be used only by the light vehicles, while the heavy vehicles would continue to pass through the intersection at ground level. The proposed facility was a part of the Master Plan for the Transportation System of Lahore City for the next 20 years. According to the sponsoring Agency the feasibility of the proposed project had been established in 1999 by the Traffic Engineering and Planning Agency (TEPA) of Lahore Development Authority (LDA). He informed that a lot of issues relating to the design of the underpass and its authenticity, traffic, capacity, scope, structures, acquisition of land etc. and consultancy were raised which had been replied to by the Sponsoring Agency: ..

In reply to a query by the Secretary, Planning and Development Division as regards the priority of the proposed project, it is

informed that these are within the master plan of the city for 20 years. The representative of the Sponsoring Agency further informed that it was one of the 19 projects identified by the Japan International Cooperation Agency (JICA) in their 1994 study for the improvement of traffic management system for the metropolitan city of Lahore .."

19. The FC College Underpass project approval also underwent the same process just after few months of the approval of the Mall Underpass Project. The consideration of it was not even deliberated upon for the obvious reasons that the same was out of the above cited 19 projects identified by the Japan Corporation Agency (JICA) in their 1994 study for the improvement traffic management system for the metropolitan city of Lahore. Needless to observe that a few underpasses alongside canal had already been completed few years early then these two, as referred in the minutes of the same meeting, quoted hereinabove. This connotes that these nineteen projects either in the shape of underpasses or of some other designs and nature, are in fact parts of a Complete Whole One Project, which partially has been executed or undertaken and the rest is to be executed, the details of which have not been made known to the public or to this Tribunal. This, "Complete Whole One Project" can safely be termed as, "Transport System", as per definition of the "project", defined by section 2(xxxv) lb) of the PEPA, 1997, whereby the construction or use of roads or other transport system have been defined as project.

20. Taking up the present complaint with regard to a part of a transport system project of Lahore City for next 20 years, the Tribunal has no hesitation to observe that this whole' of the "Transport System" requires IEE and EIA instead of each and every subproject separately, either completed or yet to be undertaken.

21. Here comes an auxiliary question to be answered with regard to plea taken by the respondents Nos. 1 to 3 to the effect that since, in the feasibility report the consultant (NESPAK) evaluated the Environmental effect of the projects during construction period and after completion of the same and moreover in the meetings of the ECNEC, the Secretary, Environment was specially invited, therefore, the requirement of section 12 of PEPA, 1997 was not obligatory. We do not agree with the plea as the specific provisions of enacted law cannot be by passed or defied by adopting some other unwarranted methods or procedures, no matter those procedures might be more comprehensive and complete than the one required by some enacted provision of law. We hold by observing that a particular act to be done under law must be done in the particular and specified manner as the provision of the law prescribes or requires the action of that act. Needless to observe that the assessments made by the consultant (NESPAK) in their feasibility reports are too generalized to compare with the requirements of submitting EIA or carry out IEE and obtaining approval hereof from EPA in a. specified manner as per Regulation namely, "Pakistan Environmental Protection Agency, (Review of IEE and EIA) Regulations, 2000)." Likewise in the

meetings, the higher officials of the Environment Departments, irrespective of their active or otherwise (absolutely passive participation in the present cases), like the one for these projects in the meetings of ECNEC cannot rule out the obligatory compliance of the enacted law.

22. With regard to objection raised by respondents Nos.4 and 5 (the contractor) pertaining to his alleged no liability for obtaining NOC under section 12 of PEPA, 1997, it is observed that no one can absolve on his own from the liability of executing an unlawful work/project on the plea that the contract awarding Agency was primarily obliged to comply with the provisions of law. Every executants of an unlawful work is considered: equally responsible for the penalty as a co-offender as the original proponent of that unlawful work is considered as an offender. An unlawful work to be accomplished by third party cannot be considered lawful for him either on the basis of absence of knowledge about law or any legal flaw in the assigned work to him by his master/contract assignee authority.

23. In the light of observations made in paragraph No.20, we, while disposing of the application's under section 265(k), Cr.P.C. as dismissed, also dispose of the present complaint in a manner that the respondents Nos. 1 and 2 are directed that the whole of the project pertaining to transport system or improvements thereof based upon 20 years planning for metropolitan city of Lahore, be assessed for IEE and EIA and after preparing the both be submitted with the EPA (Punjab) for obtaining the approval under section 12 of PEPA, 1997. We intentionally withhold implementing the provisions of section 17 of PEPA, 1997 against the respondents as this Tribunal, in the larger interest of the public and to promote of the Environmental Law, specially with reference to preamble of PEPA, 1997 is more interested in promotion of sustainable development of Environment than the determining accusation of the respondents alleged in the complaint. Anyhow at the same time, upon established guilt, they cannot be let out absolutely free from penalty but for absence of lower Ceiling of penalty in section 17 of PEPA, 1997, they are issued with the warning to the extent of individual capacity of the officials concerned of each respondent-Departments (respondents Nos. 1 to 7) as the provisions of section 19 are also invoked read with section 17 of PEPA, 1997.

M.H./1/ET Order accordingly

Case 36: Mrs. Anjum Irfan

P L D 2002 Lahore 555

Before Ch. Ijaz Ahmad, J

Mrs. ANJUM IRFAN--.Petitioner

versus

LAHORE DEVELOPMENT AUTHORITY

Through Director-General and others---Respondents

Writ Petition No.25084 of 1997, decided on 14th June, 2002,

Date of hearing: 10th May, 2002.

JUDGMENT

The petitioner has filed this writ petition with the following prayer:----

"In view of the above, it is most respectfully prayed that an appropriate writ may very graciously be issued and the respondents may kindly be directed to perform their duties in such a manner to ensure pollution free environment for the health and safe living of the citizens of Lahore. "

2. The learned counsel for the petitioner submits that according to the study carried out by the Housing and Physical Environment Planning. Department, Government of the Punjab, 98 % rickshaws any: 77 % mini-buses emit smoke which is beyond permissible limits and round the clock increase pollution in the air; more than 212 million gallons water is being drained out to River Ravi and canal which is untreated and causing immense pollution: quantum of noise pollution can be gauged from the fact that normal level in which human conversion takes place is 6 decimal and the maximum level to be endured by human beings is 90 decimal: respondents are not discharging their statutory duties in accordance with law; it is the duty and obligation of the public functionaries to discharge their duties in accordance with law but the inaction of the respondents has added more fuel to pollution which in turn is causing different diseases. This Court, keeping in view the controversy involved in this case, had recorded the statement of an expert, Professor Dr. Mumtaz Hussain and also called upon the following Advocates to assist the Court as amicus curiae:--

(i) Dr. A. Basit,

(ii) Dr. Pervaiz Hassan,

(iii) Sardar Shahid Iqbal, and

(iv) Sheikh Muhammad Asad Ullah,

3. Dr. A. Basit, Advocate entered appearance on 19-11-1997 and suggested that Secretary Transport, respondent No.5, be directed to collect material relating to proposal for control of pollution ascribed to traffic and to arrange for submission of two copies of the same through a responsible officer. Respondent No.3 be also directed to provide the statistic with respect to the challans of the vehicles emitting smoke and also the details of vehicles impounded so far in this regard, if any. The aforesaid respondents were directed to submit their reports as suggested by the learned amucus curiae, Dr. A. Basit, Advocate.

4. Dr. Pervaiz Hassan entered appearance on 9-4-2001 and suggested to implead the following as respondents:--

(i) Punjab Environmental Protection Agency, Department through its Director-General, Lahore.

(ii) Pakistan Environmental Protection Council through its Chairman, Islamabad.

The learned amicus curiae also proposed that this Court can suo mote implead the aforesaid parties as respondents without any application. The aforesaid proposal of the learned amicus curiae was accepted and office was directed to send notices to the newly-added aforesaid respondents vide order dated 9-4-2001. All the respondents initially mentioned in the amended writ petition as well as the newly-added respondents were directed to file report and parawise comments. In obedience of the direction of this Court, the respondents filed report and parawise comments.

5. Dr. Pervaiz Hassan learned amicus curiae submits that by virtue of section 15(1) of Pakistan Environmental Protection Act, 1997, no person shall operate a motor vehicle from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the National Environmental Quality Standards or where applicable the standards established under clause (g) of subsection (1) of section 6 of the aforesaid Act. He further submits that it is the duty and obligation of the public functionaries to issue a notification under the aforesaid section and instructions to the public functionaries to comply with the command of section 15 of the aforesaid Act in letter and spirit. The respondents failed to comply with the command of the aforesaid section, therefore, failed to discharge their statutory duty. He further submits that by virtue of section 15(2) of the aforesaid Act, Federal Agency is statutory bound to direct the competent Authority that any motor vehicle or class of vehicles shall install such pollution control devices or other equipment or use such fuels or undergo such maintenance or testing as may be prescribed. The competent Authority has issued Notification dated 24-8-1993 to the following effect:--

1. Smoke 40% or 2 on the Ringle to be To be compared

compared with Ringle mann. with Ringle mann

Scale during engine mann, chart Chart at a dis

at a distance acceleration tance of 6 metres

mode of 6 metres or more. or more.

2. Carbon Emission Standards:

Monoxide New , Used

Vehicles Vehicles

4.5% 6% under idling conditions:

Non-despersive infrated

detection through gas

analyzer.

3. Noise 85 db (A) Soundmetre at 7-5

metres from the

source.

Ministry of Environment, Local Government and Rural Development issued a Notification dated 27-10-1998 to the following effect:--

1. Clauses (a), (e), (f), (i), (j), (k), The system and proce

(1), (m), (n), (o), (p), (q), (r), (s) dures for monitoring

and (t) of subsection (1) of section 6 and measurements under

and subsection (2) of that section. section 6(1)(i), shall

be established by the

Pakistan Environmental

Protection Agency.

2. Clauses (t), (g), (h), (i) and

(j) of section 7

3. Section 12

He further submits that authorities under E.P.D. Act, be directed that industries and projects comply with the prescribed N.E.Q.S. to avoid air and water pollution and that the provisions of the Act and

the rules thereunder must be strictly complied with. He further submits that competent Authority shall have to send cases of the offenders to the Environmental Magistrate; He further submits that E.P.D. Authorities be directed to initiate proceedings against the offenders under section 16 of the aforesaid Act. He further submits that this Court may direct the Federal Ministry of Environment, Local Government and Rural Development and P. E. P. C. to develop the National Ambient Air Quality Standards and also necessary -direction be issued to the P.E.P.C. to revise, strengthen and enforce the N.E.Q.S. emission from vehicular traffic and emission and effluents from industries. He further submits that Federal Government be directed to notify the rules for pollution control devices and fuels by virtue of section 15(2) of the Act. He further submits that respondents are duty bound to take action against the offenders in accordance with law. He further submits that superior Courts have already prescribed parameters qua the controversy involved in this case but the respondents failed to implement the judgments of superior Courts. He further submits that judgment of this Court is binding on each and every organ of the State by virtue of Article 201 of the Constitution whereas the judgment of the Honourable Supreme Court is binding on each and every organ of the State by virtue of Articles 189 and 190 of the Constitution. In support of his contention, he relied upon the following judgments:--

(1) PLD 1992 Journal 21.

(2) Ch. Riaz Mahmood Yazdani v. The Federation of Pakistan (1990 CLC 1406).

(3) Pollution of Environment Caused by Smoke, Emitting Vehicles, Traffic Muddle (1996 SCMR 543).

(4) Human Rights Case (Environment Pollution in Balochistah (PLD 1994 SC 102).

(5) Ms. Shehla Zia and others v. WAPDA (PLD 1994 SC 693).

(6) General Secretary, West Pakistan Salt Mines Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore (1994 SCMR 2061).

(7) M.D. Tahir, Advocate and others v. Provincial Government, through its Secretary, Forest Department, Lahore and another (1995 CLC 1730).

(8) Mst. Ameer Bano v. S.E., Highways (PLD 1996 Lahore 592).

(9) Asfand Yar. Khan v. Chief Commissioner, Islamabad Capital Territory, Islamabad and 3 others (1996 SCMR 1421).

(10) Pakistan Chest Foundation and others v. Government of Pakistan (1997 CLC 1379).

(11) Abdul Qayyum v. D.G., EPA.(1999 PLR 640)

(12) Tanvir Arif v. Federation of Pakistan (1999 CLC 981).

(13) M.D. Tahir. v. WAPDA and others 2000 MLD 851).

(14) Abdul Latif v. Additional Sessions Judge, Sahiwal (2001 CLC 1139).

He summed up his arguments that action of the respondents is in violation of Articles 9 and 14 of the Constitution.

6. Mr. Sher Zaman Khan, Deputy Attorney-General for Pakistan submits that the Pakistan Environmental Protection .Act, 1997 established the Pakistan Environmental Protection Council (PEPC) as an apex and supreme environmental policy-making body in the country and the Environmental Protection Agencies (EPAs) both at the Federal and Provincial levels to administer and implement the provision of the Act. The Act itself has empowered Federal and Provincial EPAs, and provide a legal framework, to control pollution caused by motor vehicles, industries and control water, soil and noise pollution etc. The Ministry of Environment, Local Government and Rural Development to further strengthen the powers of the Provincial Governments, has already delegated most of its and Federal EPA's powers, functions and responsibilities to the Provincial Governments vide Notification dated 27-10-1997, therefore, writ petition is liable to be dismissed as the competent body framed the law, therefore, writ petition has become infructuous by efflux of time.

7. Mr. Muhammad Hanif Khatana, Additional Advocate-General, Punjab, submits that power is vested with Punjab Environmental Protection Department in view of section 15(1) of the Pakistan Environmental Protection Act, 1997, the competent Authority did not frame the rules, regulation and procedure under section 31 of the aforesaid Act, therefore, respondent No. 12, Punjab Environmental Protection Department is not in a position to implement provisions of section 15(1) of the Act. He further submits that competent Authority has delegated powers to Environment Protection Agency, Punjab in view of section 26 of the aforesaid Act. The agency is fully functional. He further submits that competent Authority has not framed regulations under sections 14 and 15 of the aforesaid Act, therefore, Environmental Magistrate under section 24(2) read with section 17(2) and (4) are not notified by the Federal Government. He further submits that Environmental Protection Agency, Punjab is already functioning in view of provision of section 16 of the Act. Since the enforcement of the aforesaid Act, Punjab Environmental Protection Agency has referred 50' cases to Environmental Tribunal for initiating proceedings under section 17 of the Act. 30 Radio talks have been arrived on the subject of environment protection and 15 T.V. interviews have been telecast to throw light on the subject of protection of environment to enlighten general public. More than 60 lectures have been delivered in

different educational institutions on the subject. He further submits that respondent No-10 Secretary Housing and Physical Planning Government of the -Punjab has been performing his duties successfully in accordance with Pakistan Environmental Protection Act, 1997. Vehicular Smoke Emitting Control Advisory Cell has been established in organizational set up of Environmental Protection Department at Lahore to control vehicular pollution. A separate campaign has been launched in different times.

8. Kh. Muhammad Atzal, Legal Advisor of respondent No.2 has also adopted the arguments of learned Deputy Attorney-General for Pakistan and learned Additional Advocate-General, Punjab. . Mian Muzaftar Hussain. Legal Advisor, I_DA also adopted the arguments of the learned Law Officer Mr. Jawad Hassan, Advocate prepared a short note/summary of the report and parawise comments filed by the respondents under the direction of this Court.

9. I have given my anxious consideration to the contentions of the learned counsel of the parties and perused the record myself.

10. It is better and appropriate to reproduce the statement of Dr. Mumtaz Ali, Professor King Edward Medical College, Lahore dated 1-11-1997:--

"I have been shown copy of the writ petition and I agree with the contents of the writ petition as it very vividly highlights the major cause of pollution which in my humble opinion are as follows:--

(i) Pollution of Air,

(ii) Pollution of Noise.

(iii) Pollution of Water, and

(iv) Pollution of Food.

The problems are intimately related to each other and have attained a magnitude which have become of national importance and is affecting every individual ranging from low to top man.

I have taken problems Nos. 1 and 2 together, i.e. pollution of Air, Land. Pollution of Noise because the original and propagation of possible solution go together. The basic source of air and noise pollution are (i) Transport, (ii) Industrial areas. There is transport which affect the masses, Vehicles, over the years, have increased at a tremendous pace and the net result of all this is combustion of carbon producing carbon-dioxide and very large number of outer chemicals which are detrimental to the health of masses. Their number needs to be cut down intelligently, in a way so as not to affect the life of a common man. For example large buses should replace some mini-buses and even cars so that instead of 50 cars or ten mini-buses, one big large bus carries out the job and in this way, pollution through buses and noise will be cut down by fifty times.

Pollution from water has attained hazardous levels and diseases like Jaundice, typhoid, dysentery and food poisoning are affecting every one. Unfortunately, water and sewerage lines run together. It may not be feasible to keep national standards of distance of 30 feet between water and sewerage line due to economic constraints but to get rid of the water pollution, education to the masses to use boiled water is the possible solution which would need minimum cost but with major benefit against diseases spread by this channel. Food pollution is also affecting the masses. It cannot be rectified over night but one thing which can tremendously decrease the incidence of diseases carried through food, is mass education, which can be carried out practically at no cost basis so that masses take only boiled milk. wash their hands after going to wash room and do not take food served at roadside. Electronic and print media can also lay tremendous role to prevent rural pollution.

Mass education can lead to beneficial result as would lead to disposal of wastage and purification of water. It will be a good example to quote that a cake of soap is far better than buying anti biotic or vaccines which may cost hundreds of rupees. It is important to control pollution so as to safeguard the masses from diseases and it would lead to better productivity and cut down the amount spent on medicines which is a very big burden not only on an individual but national exchequer.

11. Dr. A. Basit, Advocate, learned amicus curiae suggested that respondent No.3 be directed to provide the statistics with respect to the challans of the vehicles emitting smoke and also the details of the vehicles impounded so far if any. Respondent No.3 submitted report on 1-12-1997 qua the challans submitted by the office of respondent No.3 from 1-1-1997 to 31-10-1997 and total challans are 392078 and the offenders were fined and the amount of fine is Rs.2,64,41,286.

12. Before proceeding further, I would like to mention provisions of Pakistan Penal Code, Criminal Procedure Code and Civil Procedure Code, The Factories Acts and Easements Act to resolve the present controversy. The First Law Commission of India headed by Lord Macualay (who drafted the Indian Penal Code) included Chapter 14 consisting .of 28 sections (sections 268 to 294-A) dealing with 'Public Nuisance' in the Penal Code as long ago as 1860. The sole object of including Chapter 14 is to safeguard the public health, safety, convenience by causing those acts which make environmental polluted threatening the life of the people punishable. In the other words, all those acts which endanger public health directly or indirectly have been brought under the purview of the Penal Code. It is pertinent to mention here that the Penal Code in Chapter 14 consisting of aforesaid sections deals with public nuisance, i.e. the offences relating to public health, safety convenience, decency and morals. It is settled principle of law that criminal liability of companies in Pakistan is quite clear. The company is not exempted from criminal liability merely because it is a juristic person and not a natural person. Section 11 of P.P.C.

includes any company or association or body of persons whether incorporated or not into the word person. The provisions relating to the prohibition of pollution of water do not require any particular mens rea. It is negligent because every one has a duty of care based on common sense not to pollute river water which is used for drinking by men and other animals. The spoliation of water and air may take place due to the activities either of private person or corporation or public authorities. A public spring like a well are reservoir like a Municipal Water Tank is dealt with section 277 6f P.P.C. Corruption of fouling of the water of any public spring or the reservoir so as to render it less fit for the purpose for which it is ordinarily used, is punishable under this section. Section 7(f) of the Easements Act, 1882 every riparian owner has a right to the use of the water of a natural stream in its natural condition without any obstruction or pollution of that water. Section 14 of the Factories Act, 1934 requires every factory to make an effective arrangement for the disposal of waste and effluents in accordance with the rules framed under the said Act. Such rules usually require the effluents to be connected to the public drainage system with the prior approval of the Health Authorities. Otherwise the direct discharge of effluents by the factories into the rivers and seas would be actionable at the instance of those who are aggrieved by the pollution caused by such discharged.

13. Under section 91(I), C.P.C. in the case of public nuisance as a tort either the Advocate-General or two or more persons having obtained the consent in writing of the Advocate-General may institute a suit for declaration and injunction against such nuisance but section 91(2), C.P.C. makes it clear that this section shall not' be deemed to limit or otherwise affect any right of a suit which may exist independently of its provision. The judicial approach adopted by the Magistrate invoking the powers under section 133, Cr.P.C. in the interest of the society in the preservation and improvement of environment was upheld by the Indian Supreme Court in the case of Municipal Council, Ratlam v. Vardhichand and others (AIR 1980 SC 1622), the relevant observation is as follows;--

"Before us the major endeavour of the municipal council was to persuade us to be pragmatic and not to force impracticable orders on it since it had no where withal to execute the order. Of course, we agree that law is realistic and not idealistic and what cannot be performed under given circumstances cannot be prescribed as a norm to be carried out. From that angle it may well be that while upholding the order of the Magistrate, we may be inclined to tailor the direction to make it workable. But first things first and we cannot consent to a value judgment where people's health is a low priority. Nevertheless, we are willing to revise the order into a workable formula the implementation of which would be watch dogged by the Court."

In the United States of America even without such express declaration of values in the Constitution, the Judges have given standing to the consumers and citizens to come to -the Court for the

protection and improvement of environment and observed "a river is more than a amenity, it is treasury", in New Jersy v. New York (28 US 342 (1931).

14. In the, presence of the aforesaid laws which are not sufficient to control the pollution in the air and water, therefore, the competent body framed the Pakistan Environmental Protection Act, 1997. Mr Jawad Hassan, Advocate, highlighted the history of the aforesaid legislation in his articles under the heading "Environmental Law of Pakistan" reported in PLJ'2001 Magazine 198 and PLJ 2002 Magazine 71. It will also be advantageous to examine some treatise and case-law for better comprehension of the functions and duties of the public functionaries to control the pollution in the air, water and smoke. American Jurisprudence, 2nd Edition, Volume 61, Section 8, Role of Court.

Thus, an action at law or in equity may in some circumstances be an effective remedy for relief from pollution, and the Courts are the appropriate forum to compel administrative agencies to act with respect to pollution control, and to review their actions.

Section 19 (Generally)

Air pollution is for the most part a phenomenon of urban living that occurs when the capacity of the air to dilute pollutants is overburdened. Although it has become an urgent modern problem, due to a rapidly increasing urban population and increasing industrialization, it is not a recently discovered phenomenon. Originally, the public equated air pollution with coal smoke, and pollution control measures were directed to the control of smoke, dust and fumes. The experiences of two communities are held to have focused national attention oil the growing problems of air pollution and to have paved the way for the creation of the federal air pollution programme.

Section 21 (Generally)

Air pollution may take the form of smokes, fumes, dust, mist, gas, or vapors, and odours. Several common air pollutants are described individually in the following sections, but it should be noted that pollutants normally act in concert, rather than individually, and that harmful effects are created by additive or synergistic effects among air' pollutant compounds.

Section 28 (Generally)

Air pollutants have been shown to be injurious to health and to injure animals, vegetation, and property. Air pollution also dims visibility, obscures city skylines and scenic beauty, interferes with the safe operation of aircraft and automobiles and disrupts transportation schedules.

Section 30 (On animals, vegetation and property)

Extensive agriculture losses result from damages by air pollutants to livestock crops, plants and trees.

Section 34 (Implementation plans and enforcement of standards)

Enforcement of air quality standards for pollutants rests with the States, including emission standards for hazardous pollutants. However, provision is also made for enforcement by the Administrator of the Environmental Protection Agency,

Section 53 (Generally)

Man cannot exist without water. It is, essential to plane life and is necessary for a number of vital body functions in all animals., including man . Procuring an unpolluted supply of water to sustain life has become a State and national problem. Formerly pollution was considered the price of progress, and people in the United States have acted, until recently, as though their streams, rivers and lakes had an infinite capacity to absorb wastes. We have for years been heading for a mater crisis, which in many localities is already here. Water quality problems caused by pollution are prevalent in every region of the country. The two regions where water quality, and uses have been most seriously damaged are in the North Eastern States and in the area of the Great Lakes. Animal wastes from feedlots, or run off from irrigated and fertilized fields and areas where pesticides are used, is an increasing cause of pollution, particularly in the Midwest and the South West.

Section 59 (Effect of water pollution)

Water pollution affects human health in a variety of ways, and is the cause of a number of diseases. It also hampers recreational activities, such as boating and skiming swimming and sport fishing deplets natural fresh-water fisheries, and interferes with commercial fishing it adversely affects agriculture, and natural streams and other watering places have increasingly become too polluted to adequately serve livestock watering, and it may destroy the esthetic qualities of water. Pollution also increases the cost of treating water in order to make it suitable for industrial and municipal uses.

Section 74 (Generally)

Raw or inadequately treated sewage from millions of people still flows into our streams and waters. It is better to mention here that the net result on the basis of aforesaid discussion is that pollution would create dangerous germs etc. which are not good for the health of human beings, animals, birds and plants.

It is better to mention here that the net result on the basis of aforesaid discussion is that pollution would create dangerous gasses etc. which are not good for health of human being; animals, birds and plants.

It is pertinent to mention here that as a result of the industrial revolution the issue of population has become more serious:- They were crowded into cities and supplied with many more products and services. This led to a great increase in the problem of pollution. It is better and appropriate to mention here that Carbon mono-oxide is a deadly poison. It damages red blood cells of living beings. Oxygen is carried to all parts of the body by normal red blood cells: Carbon mono-oxide changes the red blood cells so that they cannot carry as much oxygen. Other cells in the body cannot produce the energy as they do not have enough oxygen. Some of the cells may die. If there is enough carbon mono-oxide in the air, it can make people dizzy, or unconscious, or it can kill them. Carbon mono-oxide is one of the most dangerous air pollutants. Industrial development on account of chemicals reactions, may change part of the fuel into tars and other kinds of chemicals. By passage of time, it is not known to every one that every moving part of the car slowly wears out. Iron, nickel, chromium and vanadium are among the air pollutants formed in this way. As the car moves along it rubs away part of the pavement. This sends asphalt and concrete into atmosphere as fine dust. Moving automobiles grind-up pieces of paper, wood, cloth and other rubbish. These all become dust. By development of science, we came to know that large quantities of poisonous solvents are used in factories where other chemicals are made. Poisonous solvent vapors get into the air from all these sources. Similarly copper burns when electric switches are opened or closed. Some metal, such as iron muss be heated to a very high temperature to melt them when they are framed into castings. Part of the metals burns and goes into the air as pollutants. Consequently, the tiny particles of asbestos can float in the air for many days. Anyone breathing air that has asbestos it gets some of the particles into his lungs. The development in the Nuclear Science tells us that nuclear power plants might also add radioactive pollutants to the air if there were an accident at the plant. Such nuclear power plants are usually built to generate electricity. Great care is taken to prevent any accidents. In addition, the wastes from nuclear power plants are carefully handled to avoid radioactive pollution. The chimneys and automobiles exhaust/send thousands of tons of carbon mono oxide into the air each day. The factory waste water does more than kill wafer organisms. It also makes rivers and lakes ugly. It spoils them for swimming and fishing. The water of the rivers or lakes may become poisonous to drink.

The Hon'ble Supreme Court has considered the problem of pollution in, case of Ms. Shehla Zia and others v. WAPDA (PLD 1994 SC 693). The relevant observation is as under:--

"Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities

and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such-like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in .the neighbourhood or at a far off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information arid education and also because such sufferance is silent and fatal and most of the people who would be residing near under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward and this has happened so in the present case.

The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but, to enjoy it under our Constitution Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right of 'life' under Article 9 and if both are read together question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. Such questions will arise for consideration which can be dilated upon' in more detail in a proper proceeding involving such specific questions.

These judgments go a long way to show that in cases where life of citizens is degraded, the quality of life is adversely affected and health hazards are created affecting a large number of people, the Court in exercise of its jurisdiction under Article 184(3) of the Constitution may grant relief to the extent of stopping the functioning of factories which create pollution and environmental degradation. "

The Hon'ble Supreme Court also passed, the interim order in such circumstances in re: "Pollution of Environment caused by smoke, Emitting Vehicles, Traffic Muddle (1996 SCMR 543) in the following terms:--

In order to streamline the process of checking as a first step in eliminating the pollution caused by the smoke emitting vehicles the following interim order is passed:

(a) A minimum of two mobile checkings per week per district for at least 2-1/2 hours duration should be arranged in terms of the earlier order which is being practised. It may, however, be added that henceforth the Honorary Magistrate appointed by the Provincial Government with the approval of the Hon'ble Chief Justice, High Court of Sindh, be associated with the checking team and if S.T.Ms. are not available, the Honorary Magistrate shall try and dispose of summary cases at the time of checking.

(b) The monthly schedule of the mobile checking shall be issued by the S.T.M. or any person authorised by the Commissioner without mentioning the checking locations which shall be decided by the checking team at the time of starting the checking on that day.

(c) A weekly report of such checking shall be submitted by the S.T.M./Honrary Magistrate to the C.P.L.C. Central Reporting Cell which shall compile the same and submit a consolidated report with comments and suggestions to the Assistant Registrar, Supreme Court, Karachi after every three months.

(d) It has been revealed from a report that K.T.C Government vehicles including police vehicles and certain "marked" private transport vehicles are not challaned. This discrimination should end and all vehicles irrespective of their owners/drivers should be brought to book in case they violate the law. On query what is meant by transport private vehicles it was disclosed that these vehicles bear a particular mark, inscription, insignia or certain words which are understood by certain persons involved with the traffic checking and they just allow them to pass without checking saying that they belong to influential persons. This is a deplorable attitude. The authorities concerned are directed to check vehicles irrespective whether they are marked or not, but if this policy of not challaning marked vehicles persists, the representative of C.P.L.C. associated with the checking team should note down the number of such vehicles and report it to the C.P.L.C. Reporting Centre which shall forward it to the Assistant Registrar, Supreme Court, Karachi.

(e) Motor vehicle inspection procedure should be totally overhauled and every week D.I.T..,- T & T, shall obtain the particulars of such vehicles to which fitness certificates have been issued by M.V.Is, according to the rules and forward them to C.P.L.C. Central reporting Cell which shall submit with comments to the Assistant Registrar, Supreme Court, Karachi alongwith the quarterly Assistant Registrar, Supreme Court, Karachi alongwith the quarterly reports.

As regards noise pollution the following interim order is passed: --

(i) As required by the Motor Vehicles Ordinance the concerned authorities should ensure that the motorcycle rickshaws are not

allowed to ply without silencers. It has been pointed out that there has been a practice in Karachi that the silencers are not fitted in the motorcycle rickshaws. Such practice, however, cannot override the provisions of law, particularly rules 155 and 158 of the Motor Vehicles Rules, 1969. In the existing circumstances, all the persons owning or plying motorcycle rickshaws should be given one month's time to get the silencers fitted in their motorcycle rickshaws. A wide publicity should be made through press, radio and television. Such notices should also be displayed at public place. After expiry of one month action shall be taken against motorcycle rickshaws plying without silencers.

(ii) Many vehicles are found fitted with pressure horns or multi-tone horns giving unduly harsh shrill loud or alarming voice. Rule 154 of the Motor Vehicles Rules, 1969 prohibits fitting of such horns. The practice seems to be that such vehicles are challaned and pressure horns are disconnected or seized by the police. However, in order to make it more effective whenever any authority seizes such horns, it should deposit it with Central Nizarat situated opposite Civic Centre, Karachi."

The Hon'ble Supreme Court has also considered the aforesaid problem of pollution in case "S. Jagannath v. Union of India and others (AIR 1997 SC 811). The relevant observation is as under:--

"We are of the view that before any shrimp -industry or shrimp pond is permitted to be installed in the ecology Fragile coastal area it must pass through a strict environmental test. There had to be a high powered 'Authority' under the Act to scrutinize each and every- case from the environmental point of view. There must be an environmental impact assessment before permission is granted to install commercial shrimp farms. The conceptual framework of the assessment must be broad-based primarily concerning environmental degradation linked with shrimp framing. The assessment must also include the social impact on different population strata in the area. The quality of the assessment must be analytically based on superior technology. It must take into consideration the inter-generational equity and the compensation for those who, are affected end prejudiced. "

15. This judgment cannot be completed without having Glimpse of tenets of Islam qua the pollution. The Islam Religion of. Humanity by Fazal Ahmad Kuraishi in 1 956 Edition in Chapter 26 under the heading of cleanliness mentioned that qur'anic Verses "Bring out from the depths of Darkness into light".

[Qur'an XXXIII, Ahzab 43]

"O thou wrapped up in a mantle (Muhammad)! Arise and deliver thy warning! And magnify thy Lord! And keep thy garments free from stain and shun all abomination. "

Qur'an LXXIV. Muddaththir 1-5."

16. Ch. Nazar Muhammad highlighted the same in the chapter of Pakeezgi, in his book (Ahkamul Quran), pages, 721 to 722 which is reproduced as follows:

17. Mr. Shafi Haider Danish in his book Qur'an and Maholiyat:

"Who has quoted verse after verse in support of his arguments and has after discussing them into different sets, placed them in the following 12 Chapters:--

(1) Innocent planet of Mortal System.

(2) Under the Trees and Vegetative cover.

(3) Deafening Noise.

(4) Sunshine, Solar Energy and The Advancing Shadow.

(5) Pursuit of Nutritive Morsel.

(6) The begging Bowl of Animal Kingdom.

(7) Nothing outside Aquatic Environment

(8) Impending Disaters of Air Polluting

(9) Miracles of the water for animal life.

(10) Leaping flames.

(11) Environmental disbalance and loss of Biodiversity.

(12) Benevolence of Rahman, ungrateful mankind and disobedient Satan.

Dr. Mirza Arshad Ali Beg, Director-General, PCSIR had written review on the said book of Shali Haider Danish and observed as under:--

"The disarray in the Pakistan social system is mainly due to failure of the system responsible for management of resources and is largely asocial maladjustment due to prevalence of the negative forces. The latter does not recognize the inappropriate processes that have become part of lifestyle and are causing damages to the social environment. Pakistanis are suffering from another syndrome, the one related to Management Crisis. No one will disagree with Danish that many of the degradation processes confronting the aesthetics of the physical environment are due to bad management and thus the making of mankind itself. This has been discussed by him in the Chapters 'Sunshine, Solar Energy and the Advancing Shadows' and 'Pursuit of a Nutritive Morsel'.

Environment describes the interaction of the living species, including man and animals, with water, air, soil and sunshine. Mankind has tried to modify the living environment to enjoy a

quality of life that is better than the immediate past. In doing so, he has used up the natural resources extensively to the stage of reaching the critical limits and degrading the environmental conditions. Pakistanis have modified the environment in their own way by adopting short-cut-to-success methods to achieve the same goals which the industrialized countries attained through hard work, patience and of course with the motives to attain superiority in war and peace i.e. in weapons and trade and industry.

The air pollution is largely the result of continuous input of toxic pollutants, discharged by an increasing number of vehicles. The pollutants include lead and unburnt hydrocarbons, 2.4, benzopyrene, carbon mono-oxide, nitrogen oxide from the combustion of petrol and cadmium from the wearing of tyres. A cloud of smoke builds up towards the evening over all crossings in the city centres all over the country. With traffic jams becoming common now; the carbon mono-oxide level reaches alarming proposition of 40 to 80 pin continuously for almost 1 to 1.5. minutes in the micro environment of all the traffic congestion points, specially at the middle of the roads. Diesel oil, furnace oil and coal, used .for energy production contain large quantities of sulphur than desired. The stroke nuisance has been vehemently protested in most American cities and there has, accordingly been a shift towards elimination of the smoke nuisance by substituting less smoky fuel and by enforced employment of combustion practices designed to eliminate smoke.

The Qur'anic instructions with regard to maintenance of water balance demand that the quality and quantity of water should be conserved at all cost. In order to maintain the quality, it becomes mandatory not to allow water to mix in with any material that is not permitted. If we had followed this Qur'anic injunction, no pollutant would have entered our water bodies, our soil may not have been salinized or intoxicated, our sea beaches may not have become unsafe for picnickers. We the believers in cleanliness being next to godliness, would have been the most environment friendly and socially very highly placed people and not the dirtiest and the most corrupt of the lot.

The natural balance has again been emphasised in verse 15:2,1, And there is not a thing but with us are the stores thereof. And we send it down only in appointed measure. The methodology adopted by Allah to maintain the balance is described in verse 15:22, and we end the winds fertilizing and cause water to descend from the sky, and give it to you for drinking. It is not you who are the holders of the stores thereof in the form of waterfalls, rivers, lakes and canals. "The way the life processes are governed is described in verse 15:23, "We it is who govern the life processes and their termination resulting in death".

Irreversible damage has been done to the soil by excessive use of water and other inputs for which the Government has been providing subsidy. Much against the concept of sustainable

agriculture, and conservation of resources as against over exploitation, restrained by the Holy Qur'an, there has been a loss of soil as well as its productivity. It is, therefore, imperative that structural imbalances that have occurred through the past neglect of important sectors of water and soil management and plant protection are rectified. For this purpose sustainable crop production will have to be introduced and locally available resources viz. organic manure, plants, trees, animals, natural biocides, and traditional cropping skills will have to be employed.

18. The General Conclusions that can be drawn from this book is that the degradation of physical as well-social environment is increasing at a rapid rate at the hands of mankind. That the humans will introduce negative forces and degrade the ecosystem was already known to Allah when-He, as the know-all, according to verse 7:11, created mankind from putrefied clay, then fashioned, and then told the angels: Fall prostrate before Adam! The obedient angles fell prostrate; but not Satan. I had suggested that human behaviour and physico-chemical laws are inter-related. I would like to apply here the arguments put forward in the book. It was suggested that the use of negative forces is related to disorderliness or entropy of a system and degradation of the ecosystem is a indication of rise in entropy.

The relevant passages of said Book are reproduced hereunder:

The contention of learned Addl. A.-G. that Provincial Environment Department cannot take action on account of non-framing their rules and regulations by the competent authority under the provisions of the Pakistan Environment Protection Act, 1997 has no force in view of the law laid down by the Honourable Supreme Court in the following judgments:--

(1) M.A.U. Khan v. Rana M. Sultan (PLD 1974 SC 228).

(2) Jahangir Mirza v. Government of Pakistan (PLD 1990 SC 1013).

By virtue of Article 5(2) of the Constitution it is the mandate of the Constitution to obey the command of the Constitution and nobody is above the Constitution. Even the Chief Executive-has to work within the command of the Constitution as per principle laid down by the Honourable Supreme Court in Chaudhry Zahoor Elahi's case (PLD 1975 SC 383).

The Constitution of the country is a kind of social contract which binds in people, society and a' State. The Honourable Supreme Court has interpreted Articles 9 and 14 of the Constitution in Shehla. Zia's case (supra) (PLD 1994 ' SC 693) and had given wide meaning to life.

It is also settled principle of law that judgment of the Honourable Supreme Court is binding on each and every organ of the State by virtue of Articles 189 and 190 of the Constitution. The above

mentioned judgments reveal that the Honourable Supreme' Court has laid down guidelines but the respondents failed to implement the same till date. Non-observance by the functionaries of the dictum laid down by the Honourable Supreme Court of Pakistan is violation of Article 189 of the Constitution. If all the prevailing circumstances i.e, judgments of the Supreme Court, action of the authorities and attitude of the public representatives or legislative bodies are put in juxtaposition, then it becomes crystal clear that legislators and executive have refused to give due respect to the dictum of Supreme Court. As mentioned above relevant provisions had been inserted in Pakistan Penal Code since 1860. It is also settled principle that law always gives guidance to only law abiding citizens. The competent body had subsequently framed the specific law to cover the subject in question under the name and style "Pakistan Environment Protection Act, 1997". The aforesaid provisions of law cannot. be enforced without the involvement of the public and its active participation in the implementation of environmental programme as the same is must for the success of the pollution control. It is the duty and obligation of the media to provide sufficient material with regard to the awareness of environmental programmes initiated by the Government or non-Government Organizations to the people of Pakistan. The aggrieved person has two remedies; criminal as well as to file a suit for damages against the offenders. It is the duty of the Members of the Bar Associations and Bar Councils to educate the people and to file suits for damages against the offenders apart from the criminal proceedings against the offenders. In fact as mentioned above awareness has peen given to the world 1400 years ago by Almighty Allah in the Holy Book of Qur'an in "Sura Rehman" warned the Human being not to disturb; balance in any sphere otherwise destruction is must. The relevant verses are mentioned above. The Muslim Scientists had worked very hard to provide facilities to the people for the betterment of the human being. After the downfall of the Muslims the western countries had taken over, the field of science. It is proper to' mention here that the developed countries had made a mark in the modern field of science. The developed countries had divided the water of sea into two categories i,e. the high sea and the territorial water. The developed countries have made various experiments in the high sea which not only destroyed the fishes etc. in the sea but also polluted the water. With the passage of time polluted water touched the boundaries of the territorial water which created pollution in the developed countries: Due to this fact they have passed the relevant laws. No doubt development of science has provided many facilities to the people but at the same time created lot of problems to the people on account of that development because the same has crossed -the natural sphere and entered into the artificial sphere due to which pollution automatically entered in every sphere of the world including air, water etc. Now I intend to discuss the role of bureaucracy in the light of historical background of creation of Pakistan. It will be germane to have a bird's eye view of the genesis of the bureaucracy. The machinery of Bureaucratic set-up in the

form of a civil service was created and, designed for perpetuating foreign imperial power and not to cater the needs and value of the people of this sub-continent. In view of this, the Civil Services acted only for the benefit of the imperial power in an imperial manner as if they re the direct representatives' of the rulers. This approach was not democratic approach to meet the legitimate needs of the people, At that time it also suited the imperial power. Gradually bureaucracy came under the influence of politicians (as was taken note of by this Court in 1999. PCr.LJ 1357 Abdul Latif's case) which is not congenial and conducive for the existence of the country, to run the State smoothly, mutual cooperation, respect and understanding. This situation will create chaos. Mere framing of law does not provide good results unless the law is strictly implemented by the respondents in letter and spirit without fear, favour and. nepotism. Islam tells us that there shall not be any pollution in any manner even in. the actions and speeches. The Founder of Pakistan has achieved the goal only on the ground that even the enemy of Founder of Pakistan have mentioned in various books that Founder of Pakistan is not only honest but he is intellectually honest. It is imperative to put the nation on right path and, therefore, follow the basic character of the Founder of Pakistan for the purpose of strengthening the country and to remove all types of pollution. It is the duty of people of Pakistan that they must be intellectually honest to the cause then it is possible to save the country from all kinds of problems like pollution. The persons who are in authority must have to obey the law. The Head Constable should obey the law and take action against driver of flagged car who violates the traffic signal or causes air pollution. The Head Constable should not be sacked for obeying the law but be rewarded. It is pertinent to mention here one incident before the independence. A Civil Judge 3rd class had decided a case against the Government. The Chief Secretary of the Province advised the Governor that Government should not implement the order of the Civil Judge 3rd Class. The Governor asked the Chief Secretary about the stamp on the order of Civil Judge 3rd Class. He replied that stamp is of Crown. He directed the Chief Secretary to obey the order of the learned Civil Judge and thereafter to avail appropriate remedy before the higher Court. In nutshell it is the duty and obligation of each and every citizen including the public functionaries to act in accordance with law.

Suggestions:

Before parting with this judgment, the following suggestions are given to the respondents for formulating the policy and relevant rules and law:--

(i) The newly-established industries are advised/compelled by .the respondents to install devices exhaustive and its success depends on the implementations and enforcement machinery provided under the provisions of Pakistan Environmental Protection Act, 1997.

(ii) Public transport should be effective so that people may prefer to travel by the public transport instead of private vehicle/car.

(iii) Efforts should be made for utilization of solar energy which is in abundance in our country.

(iv) Electric rail cars system should be introduced even in urban areas and also for long distances. Time schedule must be observed. Muchless pollution results when people do not use their own vehicles/cars but travel on trains and airplanes which is known as Mass transportation. One bus that carries at last forty people does not produce much more pollution than a vehicle/car with one person. Electric trains can be even cleaner, since trains also carry many more people than private small vehicles.

(v) Trees plantation should be patronized by the Government. For this purpose system of check and balance be introduced in Forest Department as well. Every year Forest Department announces that thousands of trees are planted. Due to lack of accountability the ground realities are entirely different.

(vi) Media should play its role to educate people of Pakistan to think and work for the nation and sacrifice its personal interest on the well known maxim that national interest is supreme qua individual.

(vii) Implement the law of the land without fear, favour and nepotism without any discrimination.

(viii)At the time of granting permission for installation of new industry or licence or local permit of new vehicle, there must be coordination between all the functionaries under all the laws so that all the requirements under the law should be completed with at initial stages. There must be one window operation so that people should not suffer on account of inaction of public functionaries.

(ix) There should be quarterly one meeting of all the public, functionaries, of all the concerned departments for the purpose of review of ground realities so, that future steps be taken on the basis of prevailing circumstances and also suggest qua amendment in rules, regulations and law to the competent authority/body. The annual report should be published for information of the people and copy of the same be sent to Deputy Registrar (Judl.) of this Court.

(x) The problem of pollution is more dangerous as compared to destruction by Hydrogen Bomb. It is proper and high time to implement the law in letter and spirit without discrimination as the life of human being is more precious. In fact, every one is not saved from the attack of pollution, in this view of the matter each and every citizen, public functionary, authority and body must discharge its responsibility to reduce this problem at any rate at any cost.

(xi) Let us try to speak truth to save the country from attack of all types of pollution so that food chain be maintained.

In view of what has been discussed above the respondents are directed to implement the provisions of Pakistan Environment

Protection, Act, 1997 in letter and spirit and frame necessary rules and regulations and issue necessary, Notifications under the provisions of the aforesaid Act preferably within six months. Let a copy of this judgment be sent to ' respondents who are directed to implement the provisions of aforesaid Act in letter end spirit preferably within six months. They are directed to submit report to Deputy Registrar (Judl.) of this Court within the stipulated period. Let copy of this judgment be also sent to the following authorities for necessary action and compliance:--

(1) Chief Secretaries/Inspectors-General of Police of all the Provinces

(2) Secretary Transport.

(3) Secretaries to the Chief Executives of all the Provinces.

(4) Principal Secretary to the. Chief Executive of the country

Before parting with the judgment I would record word of thanks for Dr.A. Basit, Advocate, Dr. Parvez Hassan, Advocate, Sardar Shahid Iqbal, Advocate and Sheikh Asad Ullah, Advocate amicus curiae, who rendered valuable assistance in resolving this important issue besides Mr. Sher Zaman Khan, Deputy Attorney-General, Mr. Muhammad Hanif Khattana, Addl. A.G., Mian Muzaffar Hussain, Advocate, Kh. Muhammad Afzal, Advocate, Dr.. Mumtaz Ali and Mr. Jawad Hassan, Advocate.

M.B.A./A-578/L Order accordingly

Case No:37 Muhammad Niaz Malik

2002 C L C 696

[Lahore]

Before M. Javed Buttar and Muhammad Saeed Akhtar, JJ

MUHAMMAD NIAZ MALIK and others---Appellants

Versus

PROVINCE OF PUNJAB and others---Respondents

Intra-Court Appeal No. 1 of 2002, decided on 3rd February, 2002.

Date of hearing: 17th January, 2002.

JUDGMENT

MUHAMMAD SAEED AKHTAR, J.--- The facts called from the Constitutional petition and the documents attached with it are that the appellants (the petitioners in Constitutional petition) are running business of Stone Crushing in Taxila, District Rawalpindi. They are allegedly lease holders of mineral blocks from the Provincial Government under the Punjab Minor Minerals Concession Rules, 1990. Lime stone required by the appellants was quarried from the said mining blocks. The respondents held auction for lease holder rights in respect of 278 Blocks on 3-9-1998. The appellants deposited 5% of the bid .money but they were not issued work-orders. The petitioner filed Writ Petition No.2057 of 1998. Iftikhar Hussain Chaudhry, J. passed the following order:--

"I direct that:--

(a) The Director, Mineral Department shall call upon the petitioners/successful bidders to clear their dues, indicating the amounts due. Any dispute about the demand/or amount due shall be resolved mutually by the parties. As submitted by learned counsel for the petitioners the Director would keep in view his earlier decision (contained in his memo., dated 18-2-1999 to his Minister) given in a similar matter. The petitioners/succ6ssful bidders will thereafter, clear their liabilities. This exercise shall be completed by 31st May, 1999.

(b) The respondents may decide about the fate of proposed `buffer zone' by the aforesaid date. In case no decision is competently taken regarding establishment of the `buffer zone' by 31-5-1999, the successful bidders, who would have paid their dues, shall be issued the work-orders after execution of lease agreements in terms of the auction held on 3-9-1999, and they shall be permitted to carry on their work in accordance with the terms of lease.

(c) The petitioners/stone-crushers shall cease their operation querying, extraction and crushing of stones, forthwith. The respondents shall have recourse to necessary, measures to stop the operation till work-orders are issued to the successful bidders. The respondents, however, shall not forcibly remove the stone crushing equipment of the petitioners from present sites till 31-5-1999.

The above arrangement is acceptable to the parties, as well."

The respondents did not comply with the above said order. A Criminal Original No.92 of 1999 was filed which was disposed of by Muhammad Nawaz Abbasi, J. on 16-6-1999 on an undertaking that the operation of the crushing of stone will not be disturbed by the respondents till the area is declared as "buffer zone".

2. The Governor of Punjab vide Notification No. V (I&MD)8-11/91, dated 22-6-2001 in the exercise of powers conferred by section 2 of the Regulation of Mines and Oilfields and Mineral Development (Government Control) Act, 1948 and Rule 31 of the Punjab Minor Mineral Concession Rules, 1990 declared an area of 1000 yards from Islamabad Capital Territory boundaries extending into Rawalpindi District of Punjab as "buffer Zone /prohibited area for mining and crushing of minerals of any kind for preservation of environment for public purpose. In pursuance of the said Notification Director of Industries and Mineral Development, Punjab, Lahore issued a notice on June 23, 2001 to the appellants to stop mining of limestone forthwith and remove/shift the mining machinery i.e. crushers and other relevant installations etc. within a period of six months from the date of issue of the notice. The appellants assailed the said Notification, dated 22-6-2001 and the notice, dated 23-6-2001 in Constitutional Petition No.2667 of 2001. Another Writ Petition No.2647 of 2001 was filed by Stone Crushers Association, Taxila.

Both the Constitutional petitions were disposed of with the observation as under:--

"The Secretary to the Government of the Punjab Industries and Minerals. Development is directed to look into this matter, hear the petitioners and then pass a lawful order on this aspect of the case."

3. The learned counsel for the appellants contended that the Governor Punjab was not empowered under section 2 of the Regulation of Mines and Oilfields and Mineral Development (Government Control) Act, 1948 to create a "buffer, zone "/prohibited area for mining and crushing of minerals. He submitted that under rule 31 of the Punjab Minor Mineral Concession Rules, 1990 power vests in the Licensing Authority and the order has not been passed by Licensing Authority. If an' area or a portion thereof under a lease was required at any time for any public purpose, the Licensing Authority could ask for release of the area. Learned counsel argued that -the creation of a "buffer zone" /prohibited area for mining and crushing of minerals of any kind for preservation of

environment was not a public purpose and environment protection was not the subject-matter of the Act XXIV of 1948. He further submitted that the Licensing Authority could not ask the appellants to remove their crushing plants/installations from the land as the same did not vest in the respondents. The respondents could only stop the quarrying of the minerals but could not be deprived of the use of their machinery/plants which had been installed after spending a colossal amount. The appellants would like to continue the business of stone crushing by importing the same from other areas. He urged that neither "buffer zone" nor "public purpose" has been defined in the Act or the Rules. The power has been exercised by the respondents in arbitrary and colourable manner. 'It was lastly argued that if the Notification is upheld, about 30,000 persons shall be deprived of their livelihood. Learned counsel varingly stated that the Fecto Cement Factory, Stone Company, Industrial Sector I-9 are emitting 314 UGM and 520 suspended particles whereas the concentration of total suspended particles in the prohibited Zone is only 185 UGM. Conversely' the learned Advocate-General, Punjab raised a preliminary objection that I.C.A. was not maintainable as an appeal was provided under the law. He 'contended that decision regarding the creation of "buffer zone" was not taken in haste. Voices of dissent were heard. After taking into a number of considerations the decision was taken by the Federal Government to direct the Provincial Government to declare it as "buffer zone". The surroundings are two important places, Taxila Civilization and Taxila Defence Installations. The appellants were offered an alternate place despite the fact that they were not the owners of the land/area. It belongs to the State. Only 20% land was owned by the private persons and they were not appellants before this Court nor the appellants were the lessees. He urged that successful bidders cannot be dubbed as lessees. Reliance was placed upon Javaid Iqbal Abbasi & Company v. Province of Punjab and 6 others 1996 SCMR 1433 and Sated Afzal v. Mumtaz Hussain and others 1994 SCMR 2085. He further submitted that the "public purpose" was apparent and the Government was only arbiter of the same. Reliance was placed upon Pakistan through Ministry of Works, Government of Pakistan, Karachi and another v. Muhammad Ali and others PLD 1960 SC 60. The appellants had already availed the facility of excavation of crushing, Rs.17,00,00,000 were due from them. Lastly it was urged that the appellants had no locus standi to file the writ petition.

4. We first take up the preliminary objection raised by the learned Advocate-General about the maintainability of the appeal. An appeal is competent under Rule 48 of Punjab Minor Minerals Concession Rules, 1990 before the Director of Industries and Mineral Development if a person is aggrieved by an order of Licensing Authority passed under these Rules. In the instant case the Notification has been issued by the Governor, Punjab and no appeal is provided against the said order. The notice, dated 23-6-2001 has been issued by the Director as a consequence of Notification issued

by the Honourable Governor Punjab. We tend to agree 'with the learned counsel for the appellants that the I.C.A. is maintainable.

5. The impugned Notification, dated 22nd June, 2001 has been issued under section 2 of the Regulation of Mines and Oilfields and Mineral Development (Government Control) Act, 1948 read with Rule 31 of the Punjab Minor Minerals Concession Rules, 1990. Section 2 of the Act XXIV of 1948 empowers the "appropriate Government" "to make rule to provide for all or any of the matters" enumerated therein. "Appropriate Government" has been defined in section 6 of the aforementioned Act as under:--

"6. Definition of appropriate Government.-In this Act, `appropriate Government' means, in relation to the mines of nuclear substances, oilfields, and gasfields, and development of such substances, mineral oil and gas, the Central Government and, in relation to the other mines and mineral development, the Provincial Government."

The Government of Punjab is the "appropriate Government" in the instant case. Rules 31 of the Punjab Mines Minerals Concession Rules, 1990 reads as under:--

"31. Exclusion of lands for public purposes etc.--- If an area or a portion thereof held under a lease is required at any time for any public purpose, the lessee shall forthwith release to the Licensing. Authority such. area and to such extent as is required by the Government and in such a case the bid money will be reduced proportionately. "

The above rule would clearly reveal that whenever an area or a portion thereof held under a lease is required by the Government ax any time for any public purpose, the lessee is bound to hand over the same to the Licensing Authority. The controversy centers around the public purpose for which the area is required. The term "public purpose" has not been defined in the Act and the Punjab Minor Minerals Concession Rules, 1990. There are many statutes in which the expression "public purpose" occurs. Similar phrase has been used in the Land Acquisition Act, 1894. It employs the expression "public purpose" in a very wide sense. It is impossible to place any limit upon the purposes which in the light of the exercise of Governmental power over large territories and populations, in respect of the multifarious activities go on in the new system of development being carried out by the Government. In the case reported as Hamabai Framjee v. Secretary of State for India AIR 1914 PC 20 wherein the expression "public purpose" occurring in an instrument of. lease was explained as under:--

"I make no attempt to define precisely the extent of the phrase `public purposes' in lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, i.e., an object or aim, in which the general interest of the community as opposed to the particular interest of the individuals, is directly and widely concerned."

In the case Pakistan through Ministry of Works, Government of Pakistan, Karachi and another v. Muhammad Ali and others PLD 1960 SC 60, Pakistan through the Secretary, Ministry of Defence v. Province of Punjab and others PLD 1975 SC 37, Muhammad Akbar through Legal Representatives and 7 others v. The Commissioner, Rawalpindi Division and 2 others PLD 1976 Lah. ,747 and Muhammad Ashrhf Khan v. Rqyvenue E.A.C. and 7 others 1980 CLC 1504. The said connotation was approved. Now it is widely accepted that the general interest of the community, as opposed to the particular interest of the individuals is to be respected.

6. In the similar circumstances, in the case of Rural Litigation and Entitlement Kendra, Dehradun and others v. State of U.P. and others AIR 1985 SC 652 the Indian Supreme Court directed closure of "C" Category mines and also "B" Category mines' on permanent basis. The Court observed:--

"It is the price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with the minimal disturbance to ecology and balance and without hazard to them, to their cattle, agricultural land etc."

In Rural Litigation and Entitlement, Kendra and others v. State of U.P. and others AIR 1987 SC 359 the Court stated as under:--

"It is for the Government' and the Nation not for the Court to decide whether the deposit should be exploited at the cost of ecology and environmental consideration or the industrial requirement should be otherwise satisfied. It may be perhaps possible to exercise greater control and vigil over the portion and strike a balance between preservation and utilization; that would indeed be a matter for an expert body to examine and on the basis of appropriate advice, Government should take a policy decision and formally implement the same."

Consciousness regarding environmental protection is of recent origin 4td this sense is on the increase. The human society is always progressing, law cannot be static. Society changes and the law has to help in the form of this transformation. A balance has to be maintained between the conflicting interests. Plants posing danger to the health in the neighborhood have to be weighed against various considerations, such as welfare of the people. The Government has the' responsibilities in relation to environmental matters, river pollution, clean air and noise control. The Notification has not been issued in haste but after conscious application of the mind keeping in view the importance of the areas one of the oldest civilization and the ecology requirement. Gandhara and Budhist civilization is a national asset arid is to be preserved.

7. Generally, environmental matters can be tackled in three ways; voluntary efforts, regulatory regimes and economic means such as environmental taxation. Voluntary efforts have their limits, as past experience amply shows. Regulations should be minimized so as not

to hurt long term economic growth. The Government has chosen the process of regulation. We are of the view that keeping in view the importance of the area the Notification has been rightly issued in the public interest i.e. for public purpose.

8. As far as the contention of the learned counsel for the appellants that they are the owners of the land and cannot be directed to remove their machinery/plants is concerned there is nothing on record to show the title of the appellants in the land. The learned Judge-in-Chamber rightly observed that:--

"It is verbally argued before this Court that the lands upon which the installations have been made belonged to the private owners and not the Government and, therefore, the Government had no locus standi in asking them for the removal of the installations or structure or imposing penalties so long as they were not indulging in excavation minerals."

In the absence of any documentary evidence regarding ownership of land by appellants, it would be futile to divulge. on this point. Similarly there is no report or evidence regarding the strength of total suspended particles in the area. Likewise the question of 30000 persons becoming jobless cannot be gone into by this Court as these are all policy matter. We also have our doubts about the figure. These points can be urged before the Government. Pakistan being a welfare State, every Department and organ of this country must always endeavour to seek the welfare of the people. The concept of social justice would stand defeated in case the hierarchy of officialdom go on ignoring the well being of the people. It is on record that the appellants have declined to accept the alternate land. The learned Judge-in-Chamber has provided ample relief to the appellants by allowing them to urge these points before the Secretary to Government of Punjab. Industries and Minerals Development, where all these matters can be thrashed.

9. For what has been discussed above this appeal has no merit and is dismissed leaving the parties to bear their own costs.

Q.M.H./M.A.K./M-1020/L Appeal dismissed.

PART-III –Cases From Other Jurisdictions of World

Summaries of Cases From India

Case: 1 MK Ranjitsinh et al. v. Union of India et al.

Summary:
The present case is a writ Petition was filed to the Supreme Court of India, invoking its jurisdiction and to issue the necessary order to protect two endangered birds, the Great Indian Bustard (GIB) and Lesser Florican. This petition was in reference the judgment of the Supreme Court dated 19th April, 2021 wherein the Supreme Court had ordered that a large part of the territory not be used for overhead transmission lines, gave instructions to convert to underground power lines within a year and appointed a committee to determine whether laying high voltage underground power lines would be feasible. The Ministry of Environment, Forests, and Climate Change, the Ministry of Power, and the Ministry of New and Renewable Energy ('MNRE') requested a modification of the judgement dated 19th April, 2021, on the grounds that the implementation of the said judgment would cause adverse implications for the power sector and India's International commitment for energy transition and fulfilment of promise under the Paris agreement signed by India in 2015 under the United Nations Framework Conventions on Climate Change[UNFCC]. In the present case the Apex Court had to decide two major issues i.e. modification of the directions issued under the earlier judgment dated 19th April, 2019 and to balance the preservation of Great Indian Bustard and India's commitment to control climate change through just transition [shifting from energy from fossil fuels to renewable energy]. The Apex court reviewed the factors causing threats to Great Indian Bustards, the actions taken by the Government of India, specifically the programme 'Habitat Improvement and Conservation breeding of Great Indian Bustard' launched in 2016 and other measures. The Court also discussed the impacts of changing climate and India's commitments and efforts to control it. It was observed that promotion of renewable energy sources is crucial for promoting social equity by ensuring access to clean and affordable energy for all segments of society and thus fostering inclusive growth and development across the nation. The Court emphasised on the duty on the part of the State under Article 48 A and fundamental duty of citizens under Article 51 A of the constitution of India as constitutional commitments to ensure protection of natural world and compassion for living creatures. Relating these duties to Articles 21 and 14 of the Indian Constitution, the Court declared that the right to clean environment and right against the adverse effects of climate change has its source in Article 21 which recognises the right to life and personal liberty and article 14 which indicates equality before law and equal protection of law. Thus, justifying the actions of the State, the court dealt with intersection between climate change and human rights as well as a novel issue of intricate interface between the conservation

of an endangered species, such as the Great Indian Bustard and the imperative of protecting against the climate change.
The Supreme Court noted the need to balance the interests of conserving the GIB with India's commitment to reduce emissions and move away from fossil fuel-based energy resources. By an order dated 21 March 2024, the SC restricted the undergrounding requirement under the 2021 Order to only the priority GIB areas (approximately 13,163 square kilometers), subject to feasibility to be determined by an expanded seven-member expert committee. The Supreme Courtalso modified the 2021 Order by easing the restrictions imposed by the 2021 Order in the potential GIB areas

Case:2 Ashish Kumar Garg v. State of Uttarakhand

(Special Leave to Appeal (C) No (s). 12591/2022)

Summary:

In an effort to impede the proposed cutting down of 2057 trees in Dehradun in order to widen the road, the Petitioner filed a writ petition in the public interest. The petitioner claims that the respondents were determined to take down fully grown trees rather than remove encroachments, stalls, electric polls, transformers, tankers and vehicle parking that is not planned, hawkers and squatters, and the encroachment of walking spaces. Additionally, the petitioner requested that the respondents provide guidelines for any road widening project that would require the subsequent felling of trees.
The petitioner’s stay application was dismissed by the Court, enabling the State to press forward with the road widening project. Nonetheless, the State was directed to abide by the conditions and directions set forth by the Court. The Court took into consideration the significance of sustainable development and striking a balance between development and environmental needs. Although it recognized the effects of tree-cutting, it concluded that the amount of forest cover in the area did not put the species of birds and insects at risk. The court additionally noted that the road's development and widening were urgently needed owing to the heavy traffic and would have possible advantages in terms of improved traffic flow and lower carbon emissions.

Case 3: Sukhdev Vihar Welfare Residents Association v. Union of India

(Application of 2013 (M.A. NO. 19 OF 2014)

In 2013, the applicants, a welfare residents association, challenged the construction and operation of the waste-to-energy plant by the Municipal Corporation of Delhi (MCD). The plant to be established in a densely populated residential area would be dangerous to the lives of the residents. The incineration of unsegregated municipal solid waste emits large quantities of GHG, including carbon dioxide and nitrogen oxides thereby contributing to global climate change. They are also a large source of indirect GHG, including carbon monoxide, non-methane volatile organic compounds and sulphur dioxide. The incinerator also emits more CO2 per MW/hour than any fossil fuel-based power source including coal/fuel power plants. The respondents, MCD, argued that the plant is a state- of-the-art facility and offers a clean, efficient and effective alternative to dumping of municipal solid waste in landfill sites. It is in the public interest that the plant operate.

On February 2, 2017, the NGT, however, allowed the operation of the plant. The need of the hour is to ensure processing of the municipal waste with least residue by recourse to developed and tested technologies. Examining public health and interest in conjunction with environmental protection, the balance tilts in favor of permitting the plant to continue its operation of processing the municipal solid waste from waste to energy. The applicability of precautionary principle through monitoring and adherence to stringent standards would ensure that there are no adverse impacts on public health and environment.

Importantly, the NGT observed that the plant in question has been developed as a Clean Development Mechanism (CDM) project. CDM projects, as registered with UNFCCC, are projects that adopt precision in technology that take care of environmental issues as per the international standards including stoppage of generation of GHG emissions. They are considered to be environment friendly, and are thus eligible for carbon credit.

According to the tribunal, the project proponent adopted anti-pollution measures, improved technology, introduced new mechanism for segregation and brought emissions not only within the prescribed limits but even to the more stringent standards imposed by the regulatory authorities. Based on the scientific evidence and inspection reports, the waste-to-energy plant was permitted to operate.

Summaries of Cases From Nepal

Case:1 Ramchandra Simkhanda et. al v. Nepal Government, Office of the Prime Minister and Council of Ministers
(068-WO-0597, Decision Number 10204)

Summary:

Chitwan National Park is a UNESCO World Heritage Site and is one of the last refuges for the one-horned rhinoceros and the Bengal tiger. It is also one of the only surviving natural ecosystems in South Asia and the lakes in the parkland have also been designated as a wetland of international importance under the Ramsar Convention. Owing to this, the Park has been legally protected under the National Parks and Wildlife Conservation Act and the national army has been mobilized for its protection since 1975.
However, in late 2011, the Government began planning construction for roads through the park. This prompted the petitioner, Advocate Ramchandra Simkhada, to request the court to halt the construction of the 30-kilometer East-West Highway given that it would pass through the habitat of endangered animals and plants in the region. Following this, in 2017, UNESCO issued a formal warning that moving ahead with the project would put the Park on the World Heritage in Danger list and significantly harm the biodiversity in the region. Another letter by UNESCO's World Heritage Committee in 2018 also detailed the inadequacies of the proposed Environmental Impact Assessment (EIA) report.
In keeping with this, the Court ruled in 2019 that the proposed road would gravely undermine the protected species in the area and contravene the constitutional right to safe and healthy environment. The Court also specifically observed how Chitwan National Park will be adversely impacted by climate change and road construction in the region would only heighten its vulnerability. The Court utilized the Public Trust Doctrine to highlight the Government's responsibility to protect public parkland and ruled that it is imperative therefore, that any project be carried out with due consideration for the environment and in line with the UN Framework Convention on Climate Change and the Paris Agreement. The Court also particularly made note of how, even if small, Nepal can make a meaningful contribution to curb the global impacts of climate change and reasoned how the Government must therefore be cognizant before approving catastrophic environmental projects like these for short-term gain.
An order was issued not to carry out any work related to road construction within the Chitwan National Park unless the Environmental Impact Assessment conducted in consultation and agreement with the concerned bodies including UNESCO and the Chitwan National Park Office established by law, grants permission.

Case:2 Amarnath Jha v. Office of the Prime Minister and Council of Ministers

(076-WO-1404, Decision Number 10743)

Summary:

The 2017 monsoon in Nepal brought incessant rainfall within a very compressed calendar, resulting in flash floods and landslides across a vast swathe of Terai's plains. An Initial Rapid Assessment (IRA) by the Ministry of Home Affairs showed that the disaster claimed 141 lives, injured 117 persons, displaced over 460,900 people, and left 24 missing. Damage to houses, infrastructure, and productive resources was severe with 65,000 houses destroyed and over 120,100 partially damaged.

Amarnath Jha, the plaintiff in this case, was from Saptari, the region that was perhaps worst affected by the floods. Days of unrelenting rainfall there led rivers to burst across their banks, inundating houses and blocking critical medical care for inhabitants. Jha, in his initial appeal argued that flooding and the subsequent inefficiency by the Government of Nepal to coordinate humanitarian aid and build appropriate embankments resulted in inhabitants having to drink unsafe rainwater and starve.

The Court, taking note of this, issued an interim order which held that Article 16 of the Constitution which guarantees the right to live with dignity, Article 35 which ensures the right to basic health and emergency health services, and Article 36 as well as 37 which guarantees the right to food and shelter had been violated as a result of the government's failure to initiate flood mapping and mitigation measures.

Moreover, the subsequent full judgement particularly took note of how climate change will impact rainfall, snowmelt, and Glacial Lake Outburst Floods (GLOCFs) in the Himalayas leading to increased risk of flooding in urban and rural areas. As such, the judgement recalled the Government's obligation under the United Nations Framework Convention on Climate Change of 1992 to address the impacts of climate change on water resources and agriculture, to create a comprehensive and integrated plan for the protection and rehabilitation of areas particularly affected by drought and floods. It also referenced Article 8 of the Paris Agreement, to which Nepal is party, which underscores the importance of emergency preparedness, early warning systems, and comprehensive risk assessment. In keeping with this, it also urged the Government to comply with the Sendai Framework for Disaster Risk Reduction and the Yokohama Guidelines for Natural Disaster Prevention that outlines the sovereign responsibility of each state to protect its citizens from natural disasters.

Further, in recognizing this to be the first case of its kind and cognizant of how these disputes will likely become more common in the future, the judgement held that pursuant to Section 26 and 28 of the Environmental Protection Act, 2019 all three levels of the

federal government are to be held responsible for developing policies, strategies, and action plans to reduce the adverse effects and risks caused by climate change. Finally, it emphasized the increasing interconnectedness between environment, climate change and human rights law and how the Court must exercise its authority to protect public interest and environmental justice.
In the final judgment the bench issued an order of mandamus to ensure not just immediate relief packages but also long term rehabilitation to the victims; and, to reduce the damage caused by flooding of the Khado River by constructing dams and embankments in places where there is risk of flood.

Case: 3 Shailendra Prasad Ambedkar v. Office of Prime Minister et. al.

(Writ no: 077-WC-0099)

Summary:

Pursuant to Article 119 of the Constitution, the Minister for Finance of the Government of Nepal shall lay before the joint sitting of both Houses of the Federal Parliament an annual estimate setting out, inter alia, an estimate of national revenue and the money required to meet the charges on the Federal Consolidated Fund. Following the coronavirus pandemic and the subsequent lockdown however, Budget Draft for the fiscal year 2021/22 was passed through an Ordinance. The petitioners in this case argued that adoption of the national budget through Ordinance was largely unconstitutional and more minutely, took contention with point no. 199 of the Draft which held that stone, gravel, and sand was to be exported to reduce the country's trade deficit following an Environmental Impact Assessment (EIA) report.
The petitioners claimed that excavation of stone, gravel, and sand would reduce the fertile plains of the Terai and Madhesh to barren land. The major geomorphic process in Churia coupled with weak geology, heavy rainfall and tropical weathering also means that region already experiences rapid fluvial erosion. Consequently, if excavation were to go ahead, entire villages would face increased vulnerability to floods and agricultural practices indigenous to the Terai region would be lost. The petitioners argued therefore, that allowing excavation along the Chure Range would be a flagrant violation of Article 30 of the Constitution which stipulates that every citizen has the right to a clean and healthy environment. The petitioners specifically made their claim based on Chure's increased vulnerability to climate change.
The Constitutional Bench of the Supreme Court, in this case, sided with the petitioners and held that excavation of stone, gravel and sand would be tantamount to "ecocide" and against the norm of environmental justice and inter-generational equity. The Court also acknowledged that although the State exercises permanent sovereignty over natural resources as a constituent right of self-determination, precedent set by the Court prompts that the

precautionary principle be applied. The Court iterates that environmental complexity is increasing in Nepal due to climate change and urges the government to be mindful towards the life of and within the Chure and not view it solely from an economic lens. The Court also referenced that as party to several international environmental treaties, the State has a positive obligation to preserve wetlands, protect biodiversity, and curb the illegal trade of endangered species. It also referenced the UN Human Rights Council resolution 48/13 acknowledging the right to a healthy environment as a fundamental human right. In keeping with this, an interim order from the Court stopped the draft budget from going through and the Court also halted the planned excavation of the Chure range with an order of Certiorari.

Summaries of Cases From International Criminal Court

Case: 1 NZ Students for Climate Solutions and UK Youth Climate Coalition v. Board of BP

Summary:

Students for Climate Solutions New Zealand and the UK Youth Climate Coalition have submitted a request to the prosecutor of the International Criminal Court to open an investigation against BP Senior Executives. The submission argues that BP Senior Executives allegedly committed a crime against humanity by knowingly causing and perpetuating climate change while pursuing activities in the oil and gas industry. The submission alleges that since the 1950s, BP Senior Executives have been aware of the climate implications of the corporation's oil and gas activities because of internal studies conducted into
greenhouse gases. The results of these studies have allegedly been withheld from the public. The submission further argues that as of the 1990s, BP Senior Executives have admitted their role in perpetuating climate change in company documentaries where a link was made between the corporation's activities and climate change. In prioritizing profits from oil activities, BP Senior Executives are alleged to have engaged in the following harmful behaviors:
- Creating doubt by sowing distrust in climate change science
- Entrenching dependency on BP's petroleum products on the false pretense that they are a necessary and viable solution to climate change
- Causing delays to urgent climate policy by portraying climate change as a far-future issue
- Fostering deception of governments and the wider public through misleading marketing of BP as a renewable energy company, using strategic communications to shift responsibilities for carbon emissions onto individuals, and promoting false solutions, such as yet-to-be- invented technology, that prolong the use of fossil fuels
- Ensuring dominance through attempts to control and influence political processes via systematic lobbying and campaign financing.
The submission seeks damages from BP Senior Executives, pursuant to Article 8 of the Paris Agreement, for their role in the issue of climate change.

Case: 2 The Planet v. Bolsonaro

Summary:

On October 12th, 2021, the NGO All Rise filed a communication to the Office of the Prosecutor of the International Criminal Court (ICC) requesting an investigation into Brazilian President Jair Messias

Bolsonaro for his role in Crimes Against Humanity resulting from ongoing deforestation and related activities in the Amazon rainforest. The communication was filed under Article 15 of the Rome Statute of the ICC, which allows the Prosecutor to make a request to the Pre-Trial Chamber to authorize an investigation into crimes within the jurisdiction of the court on the basis of information received from third parties.

The communication alleges that President Bolsonaro has promoted and facilitated a “widespread attack” on the Amazon Biome and “those who defend and depend upon it” which represents “a clear and extant threat to humanity itself.” The complaint argues that global climate security is dependent on the Amazon and its key role in regulating global temperatures and weather patterns, and that the “severe damage to the functions of the Amazon Biome caused by deforestation, conversion of deforested land to cattle ranching, and vast intentional forest fires” has disrupted this critical ecosystem turning it from a carbon sink to a carbon source.

The communication argues that through damage and destruction to the rainforest President Bolsonaro’s administration has inflicted, continues to inflict, and foreseeably risks inflicting “profound suffering and loss of life on local, regional and global populations alike.” It emphasizes that this is particularly true in the case of local populations living in the Amazon. These local populations are described in the complaint at “Environmental Dependents and Defenders.” The complaint argues that these populations are the victims of ongoing and intentional persecution by the Brazilian government, conducted in furtherance of a state policy, that amount to crimes against humanity contrary to Article 7 and Article 25(3)c) of the Rome Statute. It argues that since the Brazilian authorities are unable to carry out proceedings against Mr. Bolsonaro and his collaborators, the complaint should be admissible before the ICC under Article 17 of the Rome Statute.

Summaries of Cases From International Court of Justice

Case: 1 Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)

Summary:

On November 18, 2010, Costa Rica filed an action against Nicaragua in the International Court of Justice (ICJ), alleging an “incursion into, occupation of and use by Nicaragua’s army of Costa Rican territory as well as [alleged] breaches of Nicaragua’s obligations towards Costa Rica” under a number of international treaties and conventions. As part of this proceeding, Costa Rica sought compensation for the loss of environmental goods and services the country sustained due to Nicaragua’s excavation of channels on its territory. Among the services for which Costa Rica sought compensation was the impaired ability of the excavated area to provide “gas regulation and air quality services, such as carbon sequestration.” On February 2, 2018, the ICJ ruled how much Nicaragua must compensate Costa Rica for the loss of environmental services. This followed a ruling on the merits from December 16, 2015 that established that Nicaragua’s activities were unlawful and violated Costa Rica's territorial sovereignty and navigational rights, as well as the Court's Order of 8 March 2011, and found that Costa Rica should be compensated for these unlawful activities.

Costa Rica argued that Nicaragua had, on two separate incidents, occupied the territory of Costa Rica in connection with the construction of a canal across Costa Rican territory from the San Juan River to Laguna los Portillos (or “Harbor Head Lagoon”) and associated acts of dredging on the San Juan River. Nicaragua removed nearly 300 trees and cleared 6.19 hectares of vegetation in excavating the Costa Rican channels. The Costa Rican government sought compensation for the impaired ability of the excavated area to provide environmental goods and services including “gas regulation and air quality services, such as carbon sequestration.” In ruling for Costa Rica, the ICJ reasoned that Nicaragua’s activities significantly undermined the ability of the two areas to provide environmental goods and services. Because this loss of environmental services was a direct result of Nicaragua’s actions, the ICJ ruled that Nicaragua must compensate Costa Rica US$120,000 for the impairment or loss of the environmental goods and services of the impacted area in the period prior to recovery. Furthermore, the ICJ did “not consider that the impairment or loss” of carbon sequestration services could be valued as a one- time loss. This was the first case wherein in ICJ adjudicated a claim for compensation for environmental damage.

Summaries of Cases From International Tribunal for Law of Sea

Case: 1 Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law

Summary:

On December 12, 2022, the Co-Chairs of the Commission of Small Island States on Climate Change and International Law (the Commission), representing the Commission pursuant to Article 3(3) of the Agreement for the Establishment of the Commission, submitted a request for an advisory opinion from the International Tribunal for the Law of the Sea (the "Tribunal") on the legal questions set out below. The Commission referred the following legal questions to the Tribunal for an advisory opinion:

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea (the "UNCLOS"), including under Part XJI:

(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?

States concerned: Antigua & Barbuda, Vanuatu, Tuvalu, Nieu, St. Lucia, Palau.

As fixed by the order, the deadline to submit briefs was June 16th, 2023. By that date, 31 states and eight intergovernmental organizations submitted written statements pursuant to article 138 paragraph 3 and article 133 paragraph 3 of the Rules of the Tribunal. Ten additional groups submitted written statements not pursuant to these articles. Rwanda and the Food and Agricultural Organization of the United Nations (FAO) submitted statements after the due date.

On May 21, 2024, the Tribunal issued a unanimous advisory opinion. Among other things, the Tribunal concluded that States Parties to UNCLOS must "take all necessary measures to prevent,

reduce, and control marine pollution from anthropogenic GHG emissions."

The Tribunal held that anthropogenic GHG emissions into the atmosphere constitute "pollution of the marine environment" within the meaning of article 1, paragraph 1, subparagraph 4, of UNCLOS. In reaching this decision, the tribunal noted that the definition of "marine pollution" in UNCLOS contains three element: (1) there must be a substance or energy; (2) this substance or energy must be introduced by humans, directly or indirectly, into the marine environment; and (3) such introduction must result or be likely to result in deleterious effects (para. 161). The tribunal found that anthropogenic GHG emissions met each of these criteria because, "through the introduction of carbon dioxide and heat (energy) into the marine environment, anthropogenic GHG emissions cause downstream climate change and ocean acidification, which results in the deleterious effects illustrated in the definition of pollution of the marine environment." (para. 178).

With regards to pollution control measures, the Tribunal found that under article 194, paragraph 1 of UNCLOS, "States Parties to the Convention have the specific obligations to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions and to endeavour to harmonize their policies in this connection" (para. 243). The obligation to take all necessary measures is a "due diligence" obligation, which requires States to put in place a national system to regulate polluting activities and to exercise vigilance to ensure the effectiveness of that system (para. 235). The Tribunal found that, in the context of GHG emissions, the due diligence standard "is stringent, given the high risks of serious and irreversible harm to the marine environment from such emissions" (para. 243). The due diligence standard may also vary in accordance with State capabilities and available resources, as States with greater capabilities and resources may be required to do more than States with lesser means. However, the Tribunal notes that even a State with fewer capabilities and resources must "do whatever it can in accordance with its capabilities and available resources to prevent, reduce and control marine pollution from anthropogenic GHG emissions" (para. 241).

The Tribunal also found that article 192 of UNCLOS "imposes a general obligation on States Parties to protect and preserve the marine environment" (para. 400). This obligation "applies to all maritime areas and can be invoked to combat any form of degradation of the marine environment, including climate change impacts, such as ocean warming and sea level rise, and ocean acidification" (para. 400). The obligation "may include restoring marine habitats and ecosystems" where the marine environment has been degraded (emphasis added) (para. 386). Moreover, the

obligation to take measures necessary to protect and preserve the marine environment mandates that States ensure non-State actors under their jurisdiction or control adhere to these measures (para 396). Similar to the obligation to prevent, reduce, and control pollution, the obligation involves a due diligence standard, with similar contours as described above.

Summaries of Cases From World Trade Organization

Case: 1: DS-412: Canada — Certain Measures Affecting the Renewable Energy Generation Sector

Summary:

In 2009, the Canadian province of Ontario approved a feed-in tariff (FIT) scheme under the Green Energy and Green Economy Act. Under this statute, electricity produced from renewable energy was awarded a guaranteed price per kilowatt hour (kWh) of electricity delivered into the Ontario electricity system under 20-year or 40-year contracts. Such scheme also included a mandatory percentage of local content requirements (LCRs), ranging from 25% to 60%. This entails that a certain amount of components had to be sourced from local enterprises.

Following the adoption of this legislation, on September 13, 2010, Japan filed a request for consultations, claiming that the measures implemented by the State of Ontario to promote electricity from renewable energy sources were inconsistent with Canada's obligation under:
(a) Articles III:4 and III:5 of the GATT 1994, as they were laws, regulations or requirements affecting the internal sale, offering for sale, purchase, transportation, distribution, or use of equipment for renewable energy generation facilities that accord less favorable treatment to imported equipment than that accorded to like products originating in Ontario;
(b) Article 2.1 of the TRIMs Agreement, as they appeared to be trade-related investment measures that are inconsistent with the provisions of Article III of the GATT 1994; and
(c) Articles 3.1(b) and 3.2 of the SCM Agreement, as they appeared to be a subsidy granted under the measures listed above within the meaning of Article 1.1 of the SCM Agreement, because there would be a financial contribution or a form of income or price support, and a benefit would thereby be conferred.
The Canadian government defended the measures at stake, arguing that they were covered by the government procurement exception under Article III:8(a) GATT, as 'the laws and requirements that create and implement the FIT Program are laws and requirements that govern the procurement of renewable electricity for the governmental purpose of securing electricity supply for Ontario consumers from clean sources, and not with a view to commercial resale'.

On December 19, 2012, the Panel issued its report on the case, upholding Japan's claims under Article 2.1 of the TRIMs Agreement and Article III:4 of the GATT 1994. In particular, the Panel found that the incentives scheme represented 'investment measures' covered by Article 1 TRIMs Agreement, and they were 'trade-related'

in the sense that the 'Minimum Required Domestic Content Level' included in Ontario's scheme 'by definition favors the use of domestic products over imported products, and therefore affects trade'. On these grounds, the Panel ruled that the FIT program, to the extent that it features a LCR that is inconsistent with Article III:4 GATT, also integrates a TRIM inconsistent with Article 2.1 TRIMs Agreement. Moreover, the Panel rejected Canada's exception under Article III:8(a) GATT, according to which the discriminatory measures were justified as government procurement. Instead, the Panel found that renewably generated electricity was indeed subsidized by Ontario 'with a view to commercial resale', as it was commercialized through the exact 'same channels' as all other generating sources, so that it was 'in competition with private-sector electricity retailers'. Nevertheless, the Panel rejected the complaint that had been raised under the SCM Agreement, finding that it was not possible to establish that the incentives provided by the State of Ontario constitute a 'benefit' within the meaning of Article 1.1(b) SCM Agreement. In the Panel's reasoning, this is due to the fact that, in practice, renewable electricity would not be able to compete against electricity from conventional sources without the governmental incentives. Therefore, the Panel concluded that due to the lack of a comparable market standard, the program could not be legally characterized as a subsidy.

On May 6, 2013, the Appellate Body issued its report on the case, which provided a partially different reasoning on some of the issues, while not determining substantial changes in the outcome of the case. In particular, the Appellate Body's analysis focused on the applicability of the government procurement exception under Article III:8(a) GATT and on the existence of a prohibited or actionable subsidy under the SCM Agreement. With regard to the former issue, the Appellate Body provided a different interpretation than the Panel, to the extent that it recognized that the product subject to the local content requirements was renewable energy generation equipment, yet the product purchased by the Government of Ontario under the FIT Program is electricity. On this basis, the Appellate Body found that the lack of a direct competitive relationship between the two products 'electricity' and 'generation equipment' was determinant to exclude the applicability of the exception under Article III:8(a) GATT. With regard to the existence of a subsidy covered by the SCM Agreement, the Appellate Body argued that the benefit analysis should have been conducted by comparing Ontario's FIT scheme with previous renewable energy support policies adopted by the Ontario's government, rather than comparing it with conventional energy sources. However, it concluded that, given the lack of factual findings in the Panel's report, and due to the procedural restraints under Article 17.6 of the Dispute Settlement Understanding (DSU), it could not complete the analysis and determine 'whether the challenged measures confer a benefit within the meaning of Article 1.1(b) of the SCM Agreement and whether they constitute a prohibited subsidy inconsistent with Articles 3.1(b) and Article 3.2 of the SCM Agreement'.

Case:2 DS-593: European Union — Certain measures concerning palm oil and oil palm crop-based biofuels

Summary:

In 2018, the Renewable Energy Directive Recast (RED II) came into force in the European Union. RED II introduces measures to phase out biofuels which pose high risk significant GHG emissions from indirect land-use change (ILUC), which is defined as occurring where there is "cultivation of crops for biofuels, bioliquids and biomass fuels displaces traditional production of crops for food and feed purposes."
The European Commission's Delegated Regulation 2019/807 introduced pursuant to RED II laid down the criteria for determining high-ILUC feedstock and certifying low ILUC-risk biofuels, bioliquids and biomass fuels. Based on the criteria set by the EU biofuel measures in determining high ILUC-risk fuels, only palm-oil-based biofuels, which are usually imported, will be phased out by 2030 (unless certified as low ILUC-risk). By contrast, biofuels based on oil crops, which are more likely to be produced domestically in EU, such as sunflower or rapeseed, are not subject to the phase out.
On December 9, 2019, Indonesia brought a claim against the EU at the WTO. Indonesia claimed that certain measures imposed by virtue of RED II, including the criteria for determining the high ILUC-risk feedstock, and the sustainability and GHG emission savings criteria are discriminatory against palm-oil-based biofuels and are therefore inconsistent with their obligations in violation of
(a) Article 2.2 of the TBT Agreement as the measures at issue appear to create unnecessary obstacles to international trade in oil palm crop-based biofuels going beyond what is required for achieving a legitimate objective;
(b) Article 2.1 of the TBT Agreement as the measures at issue appear to discriminate among like biofuels of different origins, and between imported oil palm crop-based biofuels and like biofuels of EU origin;
(c) Article 2.4 of the TBT Agreement as EU appears to have failed to use relevant international standards as a basis for its technical regulations;
(d) Article 2.5 of the TBT Agreement as the EU appears to have failed, upon the request of Indonesia, to explain the justification for those measures in terms of Articles 2.2 to 2.4 of the TBT Agreement;
(e) Article 2.8 of the TBT Agreement, because by regulating trade in biofuels based on a description of an abstract and unsubstantiated high-ILUC risk concept instead of the performance of such biofuels;
(f) Article 2.9 of the TBT Agreement by adopting a technical regulation that has a significant effect on trade of other Members in circumstances where either a relevant international standard does not exist or the content of the technical regulation does not accord with a relevant international standard without the required publication and notification of that regulation and organising an adequate process for commenting;
(g) Article 5.1.1 of the TBT Agreement by preparing, adopting or applying conformity assessment procedures for certifying only oil

palm crop-based biofuels as low ILUC-risk, the European Union appears to treat suppliers of oil palm crop-based biofuels from Indonesia less favorably than suppliers of like biofuels from other countries, in a comparable situation

(h) Article 5.1.2 of the TBT Agreement by preparing, adopting or applying conformity assessment procedures for certifying oil palm crop-based biofuels as low ILUC-risk, the European Union appears to create unnecessary obstacles to international trade;

(i) Article 5.2 of the TBT Agreement by failing to make available conformity assessment procedures for certifying oil palm crop-based biofuels as low ILUC-risk;

(j) Article 5.6 of the TBT Agreement by requiring certification that has a significant effect on trade of other Members in circumstances where either a relevant international standard does not exist or the content of the conformity assessment procedures does not accord with a relevant international standard without the required publication and notification of that certification procedure and organising an adequate process for commenting;

(k) Article 5.8 of the TBT Agreement by failing to publish promptly or otherwise make available the conformity assessment procedures for low ILUC-risk certification;

(l) Articles 12.1 and 12.3 of the TBT Agreement by failing to take into account, in the preparation and application of the technical regulations and conformity assessment procedures at issue, circumstances specific to the developing countries where palm oil and oil palm crop-based biofuel are produced, the European Union appears to have failed to ensure that those measures do not create unnecessary obstacles to exports from developing country Members;

(m) Article XI:1 of the GATT 1994 as the measures at issue appear to restrict importation of palm oil and oil palm crop-based biofuels

(n) Article I:1 of the GATT 1994 as the measures at issue appear to discriminate among like crops and biofuels originating in third countries;

(o) Article III:4 of the GATT 1994 as the measures at issue appear to discriminate between imported palm oil and oil palm crop-based biofuels and like products of EU origin; and

(p) Article X:3(a) of the GATT 1994 as by adopting the criteria laid down in Articles 3 to 5 of Delegated Regulation 2019/807, the EU appears to have failed to administer RED II in a reasonable, impartial and uniform manner.

The EU’s contention is that the measures are not in breach of its WTO obligations. EU has also submitted that the measures implemented are justified as they are intended to pursue EU’s legitimate policy objectives of climate change mitigation, environmental protection, preserving biodiversity, and ensuring energy security and sustainability.

Case: 3: DS-600: European Union and Certain Member States – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels

Summary:

In 2018, the Renewable Energy Directive Recast (RED II) came into force in the European Union. RED II introduces measures to phase out biofuels which pose high risk significant GHG emissions from indirect land-use change (ILUC), which is defined as occurring where there is “cultivation of crops for biofuels, bioliquids and biomass fuels displaces traditional production of crops for food and feed purposes.”
The European Commission’s Delegated Regulation 2019/807 (Delegated Regulation) introduced pursuant to RED II laid down the criteria for determining high-ILUC feedstock and certifying low ILUC-risk biofuels, bioliquids and biomass fuels. Based on the criteria set by the EU biofuel measures in determining high ILUC-risk fuels, only palm-oil-based biofuels, which are usually imported, will be phased out by 2030 (unless certified as low ILUC-risk). By contrast, biofuels based on oil crops, which are more likely to be produced domestically in EU, such as sunflower or rapeseed, are not subject to the phase out.
Following the introduction of RED II and the Delegated Resolution, France introduced a new law on fuel tax. The new fuel tax regime provides incentives for the consumption of petrol and diesel that contain certain crop-based biofuels to meet EU renewable energy targets. It provides expressly under the French Customs Code that palm-oil products are not considered as biofuels. Lithuania also amended its law on renewable energy, providing that by 2030, the share of fuels produced from feedstocks considered as high ILUC-risk feedstocks are to gradually decrease to nil for the calculation of Lithuania's gross final consumption of energy from renewable sources.

On January 15, 2021, Malaysia brought a claim against the EU, France and Lithuania at the WTO. Malaysia claimed that certain measures imposed by virtue of RED II, including the criteria for determining the high ILUC-risk feedstock, and the sustainability and GHG emission savings criteria are discriminatory against palm-oil-based biofuels and are therefore inconsistent with various provisions under the TBT Agreement and GATT 1994. In summary, Malaysia has contended that the EU measures are inconsistent with:
(a) Article I:1 of the GATT 1994 as they discriminate among 'like' feedstocks and derived biofuels originating in third countries;
(b) Article III:4 as they accord less favorable treatment to imported palm oil and oil palm crop-based biofuels than they do to 'like' domestic feedstocks and derived biofuels, thereby modifying the conditions of competition to the detriment of the imported palm oil and oil palm crop-based biofuels, in particular from Malaysia
(c) Article X:3(a) of GATT 1994 as they were administered in a manner that is not uniform, impartial and/or reasonable;

(d) Article XI:1 of the GATT 1994 as they restrict the importation of palm oil and oil palm crop-based biofuels;
(e) Article 2.1 of the TBT Agreement as they have a detrimental impact on the competitive conditions in the EU market of Malaysia's imports of oil palm crop-based biofuels compared with 'like products' imported into the EU from other countries and compared with 'like' domestic products;
(f) Article 2:2 of the TBT Agreement as they are more trade-restrictive than necessary to achieve the objectives pursued by the measures
(g) Article 2.4 of the TBT Agreement as they are not based on the relevant international standards
(h) Article 2.5 of the TBT Agreement as EU has failed, upon the request of Malaysia, to explain the justification for those measures in terms of Articles 2.2 to 2.4 of the TBT Agreement
(i) Article 2.8 of the TBT Agreement as they are based on an abstract and unsubstantiated high-ILUC risk concept instead of the performance of such biofuels;
(j) Article 2.9 of the TBT Agreement as they were adopted without the required timely publication and notification of these measures and organising an adequate process for commenting;
(k) Article 5.1.1 of the TBT Agreement as they treat suppliers of oil palm crop-based biofuels from Malaysia less favourably than domestic suppliers of 'like' biofuels or suppliers from other WTO Members in a comparable situation;
(l) Article 5.1.2 of the TBT Agreement as they create unnecessary obstacles to international trade;
(m) Article 5.2 of the TBT Agreement as EU failed to make available the conformity assessment procedures to certify low ILUC-risk;
(n) Article 5.6 of the TBT Agreement as EU neither notified nor enter into meaningful consultations, or allowed for comments on such conformity assessment procedures;
(o) Article 5.8 of the TBT Agreement as EU neither promptly published nor otherwise made available the measures at issue, which provide criteria for certifying low ILUC-risk biofuels, being conformity assessment procedures within the meaning of Annex 1.3 of the TBT Agreement; and
(p) Articles 12.1 and 12.3 of the TBT Agreement as EU, in the preparation and application of the measures, failed to take into account the circumstances specific to developing countries, in particular Malaysia, where palm oil and oil palm crop-based biofuels are produced.
In respect of the measures imposed by Lithuania, Malaysia has contended that they are inconsistent the same provisions in GATT 1994 and the TBT Agreement as set out above.
As for the measures implemented by France, Malaysia has contended that they are inconsistent with:
(a) Article I:1 of the GATT 1994 as the measures at issue, under which the tax on petrol and diesel is only reduced when they contain biofuels other than oil palm crop-based biofuels, discriminates against 'like' biofuels by granting an advantage, in the form of a tax reduction, to biofuels of some countries, that is not granted to all WTO Members, and in particular not to Malaysia,

(b) Article III:2 of the GATT 1994 as the measures at issue, under which the tax on petrol and diesel is only reduced when they contain biofuels other than oil palm crop-based biofuels, indirectly applies a tax on imported oil palm crop-based biofuels: (1) in excess to 'like' domestic biofuels; or (2) which is not similar to the tax on 'directly competitive and substitutable' domestic biofuels, and affords protection to the production of these domestic biofuels
(c) Articles 3 and 5 of the SCM Agreement as the measures at issue, under which the French Government reduces the tax on petrol and diesel containing crop-based biofuel other than oil palm crop-based biofuels and excludes petrol and diesel containing oil palm crop-based biofuels from this tax reduction, amount to a subsidy within the meaning of Article 1 of the SCM Agreement which is: (1) a prohibited import substitution subsidy within the meaning of Article 3.1(b); and/or (2) an actionable subsidy causing an adverse effect on the interests of Malaysia within the meaning of Article 5(c) of the SCM Agreement
The EU’s contention is that the measures are not in breach of its WTO obligations. EU has also submitted that the measures implemented are justified as they are intended to pursue EU’s legitimate policy objectives of climate change mitigation, environmental protection, preserving biodiversity, and ensuring energy security and sustainability.

The Dispute Settlement Body issued a report of findings which were adopted on April 26, 2024. The Panel found that Malaysia failed to establish a prima facie case of violation under the TBT Agreement or the GATT 1994 with respect to any Lithuanian measure(s) that fell within its terms of reference.

Summaries of Cases From UNFCCC

Case: 1 Non-compliance Procedure of Canada under the Kyoto Protocol

Summary:

The question of implementation arises in relation to guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol, the modalities for accounting of assigned amounts under Article 7, para 4 of the Kyoto Protocol, and the requirements of the technical standards for data exchange between registry systems.

Canada had not established a national registry by the time of the in-country visit, nor a registry system that had initialized with the international transaction log by the publication date of the review report, and had also provided insufficient information on its national registry. At the hearing, Canada acknowledged the delay in establishing its national registry at its hearing, and provided a description of how its national registry performs the relevant functions and complies with the requirements of the data exchange standards in its written submission. The information provided by Canada, alongside other evidence such as an independent assessment report, enabled a technical assessment that Canada had established a national registry able to perform the relevant functions and complying with data exchange standards. As such, this provided a sufficient factual basis to avert a finding of non-compliance.

Case :2 Non-compliance Procedure of Kazakhstan under the Kyoto Protocol

Summary:

The Compliance Committee received questions of implementation indicated in the report of the expert review team (ERT) on the review of the report to facilitate the calculation of the assigned amount for the second commitment period of the Kyoto Protocol of Kazakhstan. The enforcement branch of the Compliance Committee declared Kazakhstan to be in non-compliance with guidelines under Article 7 and Article 5, paragraph 1, of the Kyoto Protocol and the methodological and reporting requirements under the Protocol. Further, it determined that Kazakhstan had not yet met the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol.

Kazakhstan submitted its compliance implementation plan on 17 January 2020, however the chairman of the Compliance Committee

has noted shortcomings of the plan and asked for a revised plan to be submitted.

Case:3 Non-compliance Procedure of Ukraine under the Kyoto Protocol

Summary:

The case arose with regard to Ukraine's true-up period report after the first commitment period under the Protocol. The first question of implementation was triggered by the late submission of this report, and the inconsistencies between information in the report and the transaction log maintained by the secretariat. The second question was regarding Ukraine's emission reduction targets. It was found that Ukraine did not retire sufficient units to cover its total greenhouse gas emissions as required under the Kyoto Protocol. Consequently, on 7 September 2016 the enforcement branch determined that Ukraine was not in formal compliance with Article 7 (paragraph 1 in conjunction with paragraph 4) of the Kyoto Protocol. Ukraine was required to submit a compliance implementation plan.

In December 2016, Ukraine submitted a plan to address the non-compliance. In March 2017 and July 2017, Ukraine submitted the progress reports. In July 2017, Ukraine also revised its true-up report for the first commitment period. Subsequently, on 6 September 2017 the enforcement branch considered the report submitted by Ukraine and concluded that there no longer continues to be a question of implementation.

Case:4 Non-compliance Procedure of Bulgaria under the Kyoto Protocol

Summary:

The case arose with respect to Bulgaria's 2009 annual submission that was not compliant with the UNFCCC reporting guidelines, the IPCC good practice guidance and the IPCC good practice guidance for LULUCF. The institutional arrangements and technical competence appeared to be insufficient. Consequently, it was found that the Bulgarian national system did not operate fully in accordance with the general and specific functions as set out in the guidelines for national systems. On 28 June 2010, the enforcement branch determined that Bulgaria was not in compliance with the guidelines for national systems and consequently not eligible to participate in the transfer and sale of emission credits. In August 2010 and October 2010, Bulgaria submitted revised plans of implementation and updated reports. On 4 February 2011, the branch decided that there no longer continued to be a question of implementation with respect to Bulgaria's eligibility and reinstated Bulgaria's eligibility eligible to participate in the mechanisms under articles 6, 12 and 17 of the Protocol.